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APPENDIX

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Supreme Court of the United States

OCTOBER TERM, 1968

No. 158

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association, and GRIFF DAVIS, individually and as General Chairman of the BROTHERHOOD OF RAILROAD TRAINMEN, and W. J. WEIL, individually and in behalf of all members of the BROTHERHOOD OF RAILROAD TRAINMEN,

Petitioners,

—against—

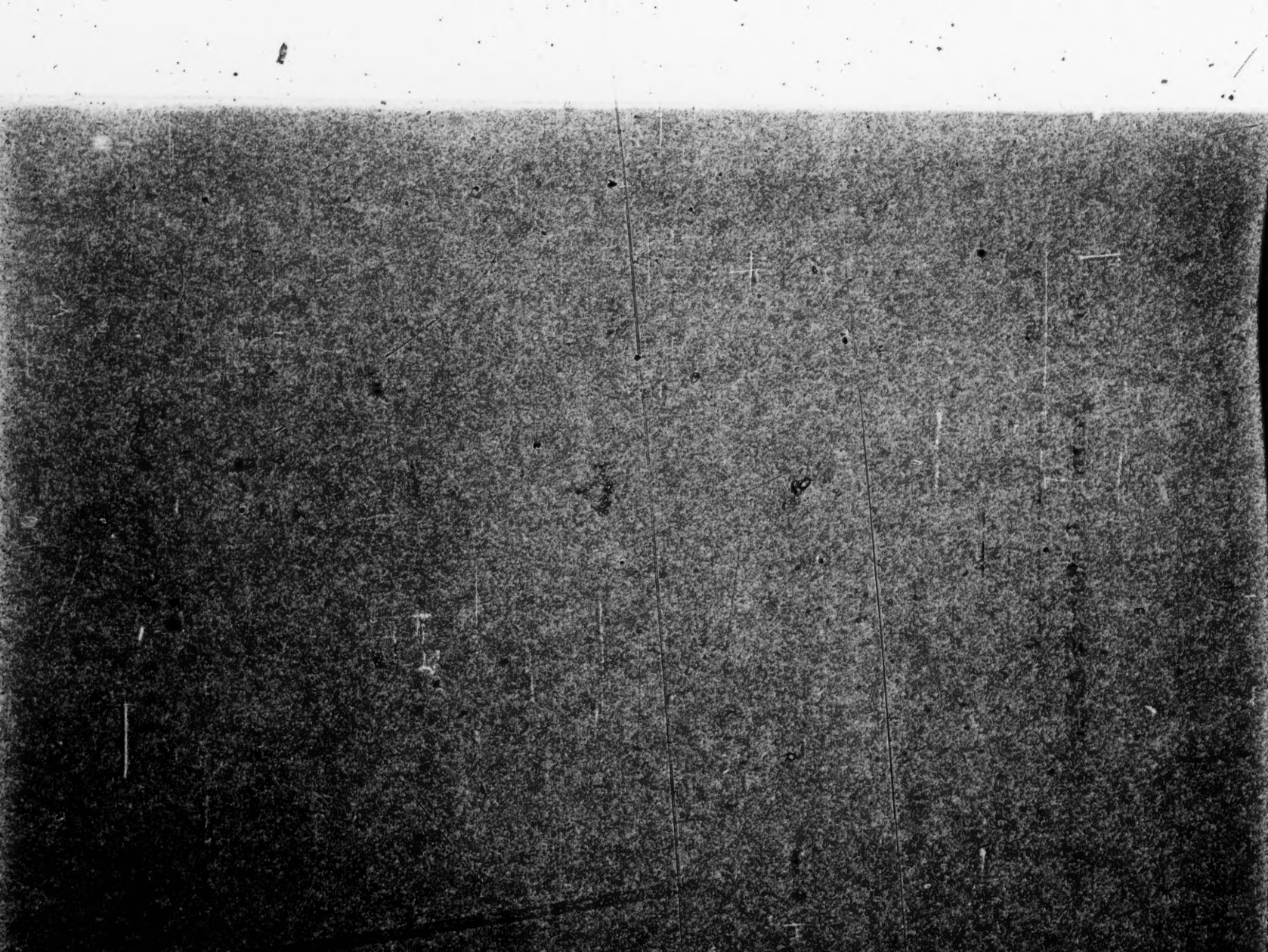
JOHN P. O'CONNELL, R. A. GALLO, and CHARLES DOYLE, individually and in behalf of all members of the SWITCHMEN'S UNION, who are employed by the ERIE LACKAWANNA RAILROAD COMPANY, and SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO, an unincorporated association, and WAYNE W. DELANEY, DORRENCE E. NEU, GLEN L. THOMPSON, and JOHN A. BISH, individually and in behalf of all members of the ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, who are employed by the ERIE LACKAWANNA RAILROAD COMPANY, and ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 3, 1968

CERTIORARI GRANTED OCTOBER 14, 1968



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Docket Entries

PROCEEDINGS IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

DATE	PROCEEDINGS
3–31–67	Filed complaint and issued summons.
4– 5–67	Filed ANSWER of Brotherhood of Railroad Trainmen, and W. J. Weil.
4–20–67	Filed deft's (Erie Lackawanna RR Co.) ANSWER.
4–26–67	Filed pltff's REPLY to counterclaim.
4–27–67	Filed OPINION #33453. Herlands, J. • • • The defendants, singularly and collectively, and their officers, servants and representatives are hereby restrained—pending a final determination of this action—from discharge, or threatening to discharge, or attempting to cause the discharge of the plaintiffs or any other employee of the defendant railroad for failure to join or maintain membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America. This opinion constitutes the findings of fact and conclusions of law. So ordered. (mailed notices)
5–10–67	Filed verified complaint for injunction, declaratory judgment & damages.
5–17–67	Filed defts' (Brotherhood of RR Trainmen & Weil) ANSWER to Intervenor-Pltffs. complaint.
5–18–67	Filed deft's (Erie-Lackawanna) ANSWER.

Docket Entries

DATE	PROCEEDINGS
5-24-67	Filed Requests for Admission under Rule 36.
6- 8-67	Filed Notice of Motion re: Strike Complaint. Ret. 6/15/67.
6- 8-67	Filed Requests for Admission.
6- 8-67	Filed Notice of Motion re: Summary Judgment. Ret. 6/20/67.
6-23-67	Filed defts' (Brotherhood) affdvt. & notice of motion for summary judgment. ret. 7-5-67.
6-27-67	Filed defts' (Erie-Lackawanna) affdvt. & notice of motion for summary judgment. ret. 7-5-67.
6-27-67	Filed defts' (Erie-Lackawanna) affidvt. in opposition to motion filed 6-8-67.
6-27-67	Filed defts' (BRT & Weil) affdvt. in opposition to motion filed 6-8-67.
6-27-67	Filed defts' (BRT & Weil) affidvt. in opposition to motion filed 6-8-67, etc.
7-25-67	Filed memo endorsed—motion of deft BRT & Weil is denied—see opinion filed this date—Palmieri, J. m/n.
7-25-67	Filed memo endorsed—deft Erie's motion for summary judgment is denied—See opinion filed this date—Palmieri, J. m/n.
7-25-67	Filed memo endorsed—pltff's motion for summary judgment is granted—See opinion filed this date—Palmieri, J. m/n.

Docket Entries

7-25-67	Filed memorandum Opinion #33869—since the issue of invalidity of the contract clause complained of must be decided in favor of the pltffs the counterclaim for damages must of necessity be dismissed—motion of pltffs & intervenor-pltffs for summary judgment is granted—motion of defts for summary judgment is denied—Submit order on notice consonant herewith—Palmieri, J.

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Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 244—September Term, 1967.

(Argued January 3, 1968 Decided March 5, 1968.)

Docket No. 31809

JOHN P. O'CONNELL, R. A. GALLO and CHARLES DOYLE, etc., *et al.*,

Plaintiffs-Appellees,

WAYNE W. DELANEY, DORRENCE E. NEU, GLEN L. THOMPSON and JOHN A. BISH, etc., *et al.*,

Intervenors-Plaintiffs-Appellees,

—v.—

ERIE LACKAWANNA RAILROAD COMPANY, a corporation,

Defendant,

—and—

BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, *et al.*,

Defendants-Appellants.

Before:

LUMBARD, *Chief Judge,*
MOORE and FRIENDLY, *Circuit Judges.*

Appeal from an order of the District Court for the Southern District of New York, Edmund L. Palmieri, *J.*,

granting plaintiff's motion for summary judgment in an action for damages, injunctive relief and a declaratory judgment that two union shop agreements between the Brotherhood of Railroad Trainmen and Erie Lackawanna Railroad Company which did not provide that membership in any union national in scope and organized in accordance with the Railway Labor Act and admitting to membership employees of a craft or class in an operating service satisfies the union shop agreement violated Section 2, Eleventh of the Railway Labor Act, 45 U. S. C. 152, Eleventh.

Affirmed.

LEE LEIBIK, 343 South Dearborn Street, Chicago, Illinois (Ruth Weyand, 343 South Dearborn Street, Chicago, Illinois, on the brief), *for plaintiffs-appellees and intervenors-plaintiffs-appellees.*

ARNOLD B. ELKIND, 122 East 42nd Street, New York, New York, *for defendants-appellants.*

LUMBARD, *Chief Judge*:

Defendants appeal from a judgment which found strict union shop clauses in a railroad collective bargaining agreement void and enjoined the appellants from requiring membership in the appellant union as a condition of continued employment. Appellees successfully argued on motion for preliminary injunction before Judge Herlands, 268 F. Supp. 397 (SDNY 1967), and on motion for summary judgment and a permanent injunction before Judge Palmieri, that the union shop clause appellant negotiated with the railroad violates the clear language of Section 2, Eleventh of the Railway Labor Act, 45 U. S. C. 152,

Eleventh, and that the union and railroad could not lawfully condition employment upon membership in appellant union even though the union is the sole bargaining agent for all of the railroad's employees. Jurisdiction is based upon 28 U. S. C. §1337 and the Declaratory Judgment Act, 28 U. S. C. §2201.

Appellant concedes that if the words of Section 2, Eleventh of the Railway Labor Act are given their natural meaning, the agreement is invalid.[1] However, it asks the

---

1 Section 2

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute of law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organization duly designated and authorized to represent employees in accordance with the requirements of this act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class; * * *

"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-paragraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of Subsection (h) of Section 153 of this chapter, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter, and admitting to membership employees of a craft or class in any of said services; * * * PROVIDED, HOWEVER, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him. PROVIDED, FURTHER, that nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services."

court to avoid "the melancholy irrationalism of interpreting subsection (c) literally." We agree with Judge Herlands that there is no compelling indication of legislative intent contrary to the clear words of the statute, nor are the results of construing the words as they were written so absurd as to require the strained construction for which appellant contends. We affirm.

The suit was brought by the Switchmen's Union of North America, AFL-CIO, and three yard service employees of the Erie Lackawanna Railroad Company on behalf of the more than 500 members of the Switchmen's Union employed by the Erie Lackawanna against defendant-appellant Brotherhood of Railway Trainmen and Erie Lackawanna.

Prior to the merger of the Delaware, Lackawanna & Western R.R. Co. and the Erie Railroad in 1960, plaintiff Switchmen's Union had been the recognized bargaining representative of the yard foremen, helpers and switchtenders employed by the Lackawanna Railroad. Appellant Brotherhood represented these same crafts and classes on the Erie Railroad.

Following enactment of the Union Shop Amendment to the Railway Labor Act in January 1951, both unions entered union shop contracts with the railroads with which they had collective bargaining agreements. They incorporated into the contracts the language of Section 2, Eleventh of the Railway Labor Act as amended, 45 U. S. C. 152, Eleventh (1964), and construed the union shop provisions so that membership in either Switchmen's Union or Order of Railway Conductors satisfied the membership requirements of the Brotherhood's contract and membership in the Brotherhood satisfied the membership and requirement of the Switchmen's contract.

When the two railroads merged in 1960, the National Mediation Board conducted an election among all the yard

service employees of the merged railroads. The Brotherhood won from the Switchmen's Union by 43 votes out of a total of 1943 votes cast. In a representation election in November 1967 the Brotherhood received 941 votes to the Switchmen's Union's 695. From 1960 until March 1967, appellant Union and defendant railroad construed and applied the union shop provisions of the contract so that membership in either the Switchmen's Union or Order of Railway Conductors satisfied the membership requirement.

On March 14, 1967 the Erie Lackawanna and appellant entered a collective bargaining agreement which provided:

> "It is agreed, as a condition of continued employment, that within sixty calendar days following the beginning of such employment, all conductors, ticket collectors, baggagemen, and trainmen of the Erie Lackawanna Railroad Company, former DL&W District, yard service employees engaged in yard service in the New York Terminal Yards . . . represented by the Brotherhood of Railroad Trainmen (Eastern District) shall become and remain members of the said Brotherhood: Provided, that this agreement shall not require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership has been denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the Brotherhood of Railroad Trainmen."

On April 4, 1967 the same parties entered a similar contract with respect to employees on the Erie District requir-

ing them to become and remain members of appellant union as a condition of continued employment.

In granting a preliminary injunction against enforcement of this union shop provision, Judge Herlands found that the union shop agreements entered in 1967 violated the Railway Labor Act because they failed to permit employees to satisfy the membership requirements of the contract through membership in any union national in scope admitting to membership employees within the crafts or classes covered by the First Division of the National Railroad Adjustment Board. 268 F. Supp. 397 (S D N Y 1967). After the preliminary injunction was granted, the Order of Railway Conductors and Brakemen and four of its members suing on behalf of the more than 225 members of the Order employed by the Erie Lackawanna were granted leave to intervene. On July 25, 1967, Judge Palmieri granted plaintiffs' motion for summary judgment and subsequently issued a permanent injunction. He denied defendants' cross-motion for summary judgment and entered judgment for plaintiff on appellant's counterclaim.

We believe that the legislative history of the section shows that it was meant to permit membership in any union national in scope admitting to membership employees within the crafts or classes covered by the First Division of the National Railroad Adjustment Board to satisfy the union shop requirement of a contract pursuant to section 2, Eleventh of the Railway Labor Act.

The Seventh Circuit recently has reached the same conclusion, *Berkholz* v. *Dirks*, —— F. 2d —— (7th Cir. Feb. 12, 1968).

In 1934 the railway unions agreed to amendments to the Railway Labor Act which prohibited all union shop agreements in order to reduce the strength of company unions.

S. Rep. No. 2262, 81st Cong., 2d Sess., pp. 2-3, (1950); Hearings on H. R. 7789 before Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., pp. 3-4, 7-8, 16-17 (1950). See *Pennsylvania R. Co.* v. *Rychlik*, 352 U. S. 480, 489 (1957). By 1950, with the virtual elimination of company unions, the situation had changed so that twenty-one railway labor organizations, acting through the Railway Labor Executives Association, sponsored a bill to permit railway unions to enter union shop agreements similar to those authorized under the National Labor Relations Act, 29 U. S. C. §§157, 158.

The bill which was originally introduced, S. 3295, 81st Cong., 2d Sess., H. R. 7789, 81st Cong., 2d Sess. (1950), contained only one limitation: that the contracting labor organization must not deny any employee membership or expel him because of membership in any other labor organization. George M. Harrison, spokesman for the Association, testified that the reason for the provision was to permit an employee to retain membership in the union representing the craft or class in which he was mainly employed after temporary promotion or demotion to a different craft or class. He said:

> "Unlike most collective-bargaining representatives in outside industry, there are those in the railroad industry which recognize and protect the rights of employees who, because of the nature of their work, move back and forth across craft or class lines, and consequently move from the rules and working conditions of one collective-bargaining agreement to another. Good examples are those employees in the firemen's craft or class and those in the engineers' craft or class. The ordinary line of promotion for a fireman is to the position of engineer, and in a reduction of forces the

engineer returns to a fireman's position. These two crafts or classes usually are represented by different organizations. Conceivably, either the firemen's or engineers' organizations, or any other organization concerned with the movement of employees back and forth from one craft or class to another, could deny membership to employees who are members of another labor organization, and under a union-shop agreement endeavor to compel a carrier to discharge an employee whom the union would not accept because of his membership in another union.

"[I]t was deemed advisable to make this restriction absolutely clear so that employment could not be denied because a union refused to accept an employee into membership because he belonged to another union. That is the purpose of the phrase on lines 14 and 15 of page 2."

Hearings on S. 3295 Before a Subcomm. of the Comm. on Labor and Public Welfare, 81st Cong., 2d Sess., 18-19. See also Hearings on H. R. 7789 before the Comm. on Interstate and Foreign Commerce, 81st Cong., 2d Sess., 13.

However, this wording still created a problem for the railroad operating unions and they opposed the bill because it would have permitted a union to demand that employees working in the craft or class which the union represented belong to the union which was their bargaining representative as well as to the union to which they already belonged. As Mr. Justice Harlan said in *Penn. RR* v. *Rychlik*, 352 U. S. 480, 490 (1957):

"[T]he hearings on the bill revealed a problem, peculiar to the railroad industry, in establishing the union shop. Labor in this industry is organized largely on craft

rather than industrial lines. Engineers, firemen, trainmen, switchmen, brakemen, and conductors, for example, each are separately organized for the purposes of bargaining. And normally different unions represent different crafts; thus, on the same railroad, firemen might be represented by the Brotherhood of Firemen and Enginemen, and engineers by the Brotherhood of Locomotive Engineers. Yet seasonal and other factors produce a high degree of job mobility for individual employees in the industry, that is, of shuttling back and forth between crafts. For example, a fireman may be temporarily promoted to engineer for a short time, or a conductor might have to serve temporarily as brakeman. Under the ordinary union-shop contract, such a change from craft to craft, even though temporary, would mean that the employee would either have to belong to two unions—one representing each of the crafts—or would have to shuttle between unions as he shuttles between jobs. The former alternative would, of course, be expensive and sometimes impossible, while the latter would be complicated and might mean loss of seniority and union benefits."

Defendant Trainmen's Union proposed an amendment to the bill to provide for inter-craft mobility without dual-unionism:

"provided that when two or more crafts or classes closely related as respects the work performed by each and employment rights in more than one of them are held by the same employee, or promotions from one of such crafts or classes to another are had, the requirement for membership shall be satisfied by membership in the organization of the employee's choice, which is

the duly designated or recognized craft or class representative of any one of them."

Hearings on S. 3295 at 68-69; Hearings on H. R. 7789 at 32-33. Rejection of appellant's proposal and later adoption of the different language contained in Section 2 Eleventh (c) is a strong indication that Congress did not intend the result which appellant urges upon us.

While the bill was reported to both the Senate and the House without any provision for inter-craft mobility, S. Rep. No. 2262, 81st Cong., 2d Sess. (1951), H. R. Rep. No. 2811, 81st Cong., 2d Sess. (1951), members of the committees which had considered the bills met with representatives of the Railway Labor Executives' Association and the American Federation of Labor and agreed that when the bills were presented on the floor the committees would also offer an amendment stating,

"*Provided further*, that no such agreement shall require membership in more than one labor organization;" 96 Cong. Rec. 15735 (Senate 1950); 96 Cong. Rec. 17052 (House 1951).

In presenting this amendment to the Senate, Senator Hill stated,

> "An employee could belong to as many different unions as he wished to belong to. But he cannot be required to belong to one. If he belongs to one, he meets the provisions of the statute, and he cannot be required to pay dues to or to belong to more than one union."

96 Cong. Rec. 15738. Four of the operating unions, including the Brotherhood of Railway Trainmen and the Order of Railway Conductors, opposed the bill as amended. The Switchmen's Union supported the bill as amended. Consideration of the bill was postponed while the unions opposing

the bill were given an opportunity to agree upon an amendment. 96 Cong. Rec. 16189 (1950). Three of the four unions agreed to support the bill if amended to include the language now contained in Section 2, Eleventh (c). 96 Cong. Rec. 16261, 16330 (1950). Only the Brotherhood of Locomotive Engineers opposed adoption of the bill. Their opposition was based upon a belief that the bill would "guarantee that the young man who has served his apprenticeship as a locomotive fireman shall never be required to become a member of the Brotherhood of Locomotive Engineers." 96 Cong. Rec. 17052 (1951).

On December 7, 1950 Senators Taft and Hill offered the amendment drafted by the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brotherhood of Railroad Trainmen and it was adopted by the Senate the same day. 96 Cong. Rec. 16268 (1950). Senator Holland noted that the debate over the amendment had given notice to the Senate that the amendment made membership in any union among the operating brotherhoods sufficient. 96 Cong. Rec. 16322 (1950). The Senate passed S. 3295 as amended on December 11, 96 Cong. Rec. 16378 (1950). On January 1, 1951 the House agreed to consider S. 3295 in place of H. R. 7789, a similar bill. The debate in the House makes it clear that the Representatives understood the bill to make membership in any of the unions sufficient. Representative Scott, a member of the Interstate and Foreign Commerce Committee, said, "[The bill] provides that in transportation groups such as engineers, firemen, and so forth, membership in any organization, national in scope, which accepts such employees as members shall fulfill requirements of union membership." Representative Harris, who served as spokesman for the House Committee, explained the history of the Senate amendment

and stated that it "leaves to the individual employee in the operating service the choice of operating union to which he will belong, and this specifically resolves any doubt concerning a possible requirement of dual membership." 96 Cong. Rec. 17059 (1951). And Congressman O'Hara endorsed the statement of the Brotherhood of Locomotive Engineers that the amendment would mean that an Engineer would never have to join the Engineer's Union. 96 Cong. Rec. 17052 (1951).

Nevertheless appellant argues that the Supreme Court has limited the application of the proviso to situations where both unions are bargaining agents for crafts or classes of employees on the same railroad. We do not consider the language in *Pennsylvania R.R. Co.* v. *Rychlik*, 352 U. S. 480 (1957) which appellant relies upon to be dispositive. The Court held that "Section 2, Eleventh (c) allows alternative union membership only in those unions which have already qualified under Section 3, First, of the Act, as electors of the union representatives on the National Railroad Adjustment Board, and not membership in any union which happens to be, as a matter of fact, national in scope and organized in accordance with the Railway Labor Act." 352 U. S. at 485. The issue of the scope of Eleventh (c) as applied to unions qualified under Section 3, First, of the Act was not before the Court. It only decided that membership in a union which was not so qualified did not satisfy the union shop provisions of the Act.

However, appellant points to other language at page 489 of the opinion:

> "[T]he sole aim of the provision was to protect employees from the requirement of dual unionism in an industry with high job mobility, and thus to confer on qualified craft unions the right to assure members

> employment security, even if a member should be working temporarily in a craft for which another union is the bargaining representative,"

and to a statement at pages 492 and 493 that,

> "The only purpose of Section 2, Eleventh (c) was a very narrow one: to prevent compulsory dual unionism when an employee temporarily changes crafts. The aim of the Section, which was drafted by the established unions themselves, quite evidently was not to benefit rising new unions by permitting them to recruit members among employees who are represented by another labor organization. Nor was it intended to provide employees with a general right to join unions other than the designated bargaining representative of their craft, except to meet the narrow problem of intercraft mobility."

While the Court described the section as having only one purpose, prevention of compulsory dual unionism and provision for intercraft mobility, there are two aspects to the operation of the proviso reflecting the two situations in which intercraft mobility might lead to the dual unionism problem.

First, when an employee changes crafts his new craft may be represented by a different union. Under the statute the employee clearly does not have to change unions. The second situation in which the problem arises, which was not discussed in *Rychlik*, is when so many employees change crafts without changing unions that the bargaining agent for the craft no longer has majority membership in the craft. For example, when there are many layoffs so many engineers may be performing firemen's jobs that there are more engineers than firemen in firemen's posi-

tions. The result might be that the Brotherhood of Locomotive Engineers will get the contracts for both firemen and engineers and the Brotherhood of Locomotive Firemen and Enginemen will no longer have a contract with the railroad. In this situation the firemen may still want to be members of the Locomotive Firemen's Brotherhood which is their traditional craft union. The second aspect of the operations of Eleventh (c) is to permit these firemen, now a minority, to satisfy the union shop requirement by membership in their craft union, even though it is no longer their bargaining agent.

The annual reports of the National Mediation Board to Congress from 1934 to 1950 show that during this period there were 544 instances on 64 different railroads in which, through demotions or promotions due to changed employment conditions or through union recruiting, a minority union in a craft achieved a majority and as a result took over the contract traditionally held by another union. It was with this history in mind that the operating unions drafted the amendment to the bill which became §2, Eleventh (c). Obviously the amendment which the unions drafted was intended to make it clear that an employee would be able to satisfy union shop requirements by retaining membership in an operating union whether or not it was the collective bargaining agent for the craft or class in which he was working and whether or not it was the bargaining agent for any craft or class.

In any event, the Supreme Court noted in its opinion in the *Rychlik* case, that in deciding the case it did not reach the questions which had been decided by this Court. 352 U. S. at 485. Our opinion, remanding to the district court for a finding on whether the union which Rychlik joined was "national in scope" within the meaning of the Act, was predicated upon holding that membership in any such union

would satisfy the requirement of §152 Eleventh (c). 229 F. 2d at 171, 174 (2d Cir. 1956). We see no reason to hold otherwise. No argument has been advanced which compels overruling of our decision in ***Rychlik,*** as limited by the Supreme Court's holding to unions qualified under Section 3, First of the Act.

We are not persuaded by the contrary holding of the Third Circuit in *Rohrer* v. *Conemaugh & Black Lick Railroad Company,* 359 F. 2d 127 (1966), which the Seventh Circuit also has declined to follow, *Berkholz* v. *Dirks* —— F. 2d —— (7th Cir., Feb. 12, 1968).

Further, the Supreme Court's decision in *Felter* v. *Southern Pacific Co.,* 359 U. S. 326 (1959) implies that an employee can satisfy the union shop requirement by membership in any of the recognized railroad unions for the First Division, since the Court assumed that Felter had validly changed his union membership although it was clear that he left the union which was his collective bargaining agent and it was not clear that his new union represented any of the railroad's employees.

It is true, as appellant contends, that as in the National Labor Relations Act, the purpose of the union shop is to prevent employees from being "free riders," see *International Association of Machinists* v. *Street,* 367 U. S. 739, 760-64 (1951). But we cannot say that the scheme adopted by Congress, which permits membership in any of the unions which jointly share the duty of administering the machinery of the National Railway Labor Act is inconsistent with that purpose. It is quite conceivable that Congress intended to implement its scheme through a system of reciprocal gains and losses among the various operating unions. While the Brotherhood of Railroad Trainmen does not collect dues from some of the employees of the Erie Lackawanna whom it represents, concededly it collects

dues from employees of other railroads who are represented by other operating unions. See 367 U. S. at 764 n. 15.

We are unable to find any justification for appellant's contention that it is entitled to a strict union shop despite the language of the Act because it is the sole collective bargaining agent for all employees on the railroad.

Appellant's cause of action for libel, pleaded in its answer as a counterclaim, was dismissed below because it "could become an issue only if the contract complained of were held to be valid as a matter of law." We disagree. The alleged libels described the union shop agreement as a "Slave Labor Agreement" and described membership in appellant as "Dictatorship with no voice in the affairs of their Union." No matter what the status of the union shop agreement, reference to a competing union as a "dictatorship" could constitute a libel. However, this cause of action does not arise out of the same transaction or occurrence as appellees' claim. As a permissible counterclaim it must be supported by independent jurisdictional grounds. 6 Moore, Federal Practice par. 13.19[1]. See *Lesnik* v. *Public Industrials Corporation*, 144 F. 2d 968, 975-976 (2d Cir. 1944). We find appellant's counterclaim lacking in this respect and affirm its dismissal for lack of jurisdiction over the subject matter.

The judgment is affirmed.

(R. 1261-1267)

Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

This cause came on to be heard by the Court on July 5, 1967, on cross-motions for summary judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure and was argued by counsel, who submitted memoranda to the Court, and the Court upon consideration thereof, having filed an opinion on July 25, 1967, setting forth the Court's conclusions of law, it is ordered, adjudged, decreed and declared as follows:

1. The Memorandum of Agreement between the defendant Erie Lackawanna Railroad Company and the defendant Brotherhood of Railroad Trainmen dated March 14, 1967, effective March 14, 1967, providing a union shop applicable to the former D.L. & W. District, violates Section 2, Third, Fourth, Fifth and Eleventh of the Railway Labor Act, (45 U.S.C. 152, Third, Fourth, Fifth and Eleventh) and is null and void and of no effect.

2. The Memorandum of Agreement between the defendant Erie Lackawanna Railroad Company and the defendant Brotherhood of Railroad Trainmen dated April 4, 1967 effective April 15, 1967, providing a union shop applicable to the former Erie District, violates Section 2, Third, Fourth, Fifth and Eleventh, of the Railway Labor Act,

(45 U.S.C. 152, Third, Fourth, Fifth and Eleventh) and is null and void of no effect.

3. The defendant Erie Lackawanna Railroad Company, its officers, agents, servants and representatives are permanently enjoined and restrained from discharging or threatening to discharge the plaintiffs or the intervenor-plaintiffs or any of them or any other employee for failure to join or maintain membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America or in the intervenor-plaintiff Order of Railway Conductors and Brakemen.

4. The defendant Griff Davis, individually and as General Chairman of the defendant Brotherhood of Railroad Trainmen, and W. J. Weil, individually and in behalf of all members of the Brotherhood of Railroad Trainmen, and the Brotherhood of Railroad Trainmen, its officers, agents, servants and representatives are permanently enjoined and restrained from causing or attempting to cause the discharge of the plaintiffs or the plaintiff intervenors or any of them or any other employee of the defendant Erie Lackawanna Railroad Company for failure to join or maintain membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America or in the intervenor-plaintiff Order of Railway Conductors and Brakemen.

5. The plaintiffs John P. O'Connell, R. A. Gallo, and Charles Doyle, individually and in behalf of all members of the Switchmen's Union, who are employed by the Erie

Lackawanna Railroad Company, and Switchmen's Union of North America, AFL-CIO and the intervenor-plaintiffs Wayne W. Delaney, Dorrence E. Neu, Glen L. Thompson, and John A. Bish, individually and in behalf of all members of the Order of Railway Conductors and Brakemen, who are employed by the Erie Lackawanna Railroad Company, and Order of Railway Conductors and Brakemen, do have and they are hereby granted judgment in their favor and against defendants and counterclaimants, Brotherhood of Railroad Trainmen and that counterclaimants take nothing by their counterclaim.

6. The plaintiffs are hereby awarded costs.

Dated: August 29, 1967.

EDMUND L. PALMIERI
United States District Judge

Judgment entered 8/29/67

JOHN J. O'LEAR, JR.
Clerk

(R. 1225-1234)

Opinion by Palmieri, D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Appearances

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Opinion by Palmieri, D.J.

PALMIERI, *J.*

These are cross-motions for summary judgment in an action seeking damages, injunctive relief and a declaratory judgment. The relevant facts are not in dispute.

The dispute is essentially one between railway unions and raises as its central issue the validity of a union shop agreement entered into on March 14, 1967, between the defendant railroad and the Brotherhood of Railroad Trainmen (Brotherhood). The agreement requires all employees covered by it to join and maintain membership in the Brotherhood of Railroad Trainmen.[1] It does not provide, in accordance with the requirements of Section 2, Eleventh (c) of the Railway Labor Act,[2] that alternate membership

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[1] "It is agreed, as a condition of continued employment, that within sixty calendar days following the beginning of such employment, all conductors, ticket collectors, baggagemen, and trainmen of the Erie Lackawanna Railroad Company, former DL&W District, yard service employees engaged in yard service in the New York Terminal Yards including Paterson, N.J., Newark, N.J. and Dundee, N.J., Port Jervis, N.Y., Middletown, N.Y., Newburg, N.Y., Syracuse, N.Y., Utica, N.Y., and Scranton, Pa., represented by the Brotherhood of Railroad Trainmen (Eastern District) shall become and remain members of the said Brotherhood...."

[2] The pertinent statutory provisions are in Section 2, Eleventh (a) and (c) and read as follows (45 U.S.C. 152, Eleventh):

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute of law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class; * * *

* * *

in any other union national in scope and admitting yard service employees to membership satisfies the union shop agreement.

All the unions involved are admittedly national in scope, organized in accordance with the Railway Labor Act and admit to membership crafts or classes of yard service employees within the meaning of Section 2, Eleventh (c) of the Railway Labor Act.

The plaintiffs and intervenor plaintiffs are the Switchmen's Union and the Order of Railway Conductors and their members.

Under date of April 27, 1967, in a well documented opinion, Judge Herlands of this Court granted a preliminary injunction enjoining the defendants from discharging, or threatening to discharge or attempting to cause the dis-

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"(c) The requirement of membership in a labor organization in an agreement made pursuant to sub-paragraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of Subsection (h) of Section 153 of this chapter, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter, and admitting to membership employees of a craft or class in any of said services; * * * *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employees, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him. *Provided, further,* that nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services."

charge of the plaintiffs, or any other employees of the defendant railroad for failure to join or maintain membership in the defendant Brotherhood so long as he maintains membership in the plaintiff Switchmen's Union of North America. In granting threshold injunctive relief it was the Court's decision that the union shop agreement between the Brotherhood and the Erie violated the Railway Labor Act in that it failed to provide, in accordance with Section 2, Eleventh (c) of that act (45 U.S.C. § 152, Eleventh (c)) (*supra*, footnote 2), that the requirement of union membership shall be satisfied if an employee maintains membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees in any of the services or capacities covered by the First Division of the National Railroad Adjustment Board. Judge Herlands traced the legislative history of the statutory provision and concluded that the statutory language and its legislative history left little interpretative flexibility and that "absent specific direction by Congress it would be most imprudent for the federal courts to reach out and create another approach to the problem of intercraft mobility and thereby assume the role of referee in inter-union power struggles. See, *Pennsylvania R. Co.* v. *Rychlik*, 352 U.S. 480, 496 (1957)."

Subsequent to the issuance of the preliminary injunction the intervenor-plaintiff Order of Railway Conductors and Brakemen, and its members, became parties and the preliminary injunction was extended to protect its employees from having to join or maintain membership in the defendant Brotherhood so long as they maintained membership in either the Switchmen's Union or the Order of Railway Conductors.

The positions of the plaintiffs and the intervenor-plaintiffs with respect to the motions for summary judgment are identical, both asserting the right to protect by appropriate provisions of the railroad's union shop agreement their right to the alternate union membership privilege granted by Section 2, Eleventh (c) of the Railway Labor Act.

This Court accepts and adopts as valid the conclusion that Section 2, Eleventh (c) of the Railway Labor Act was violated by the union shop agreement in question. The contract between the Erie and the Brotherhood fails on its face to recognize the right of the employee to alternate union membership. This is tantamount to a threat to the employee that he will lose his job unless he complies with the language as written. See, *NLRB* v. *Gottfried Baking Co.*, 210 F.2d 772, 779-780 (2d Cir. 1954); *Red Star Express Lines* v. *NLRB*, 196 F.2d 78, 81 (2d Cir. 1952); *NLRB* v. *Local No. 2 Plumbers*, 360 F.2d 428, 435 (2d Cir. 1966). The arguments of the Brotherhood to the contrary are unpersuasive. Prior to the contract in question, and ever since the 1951 enactment of the alternate membership provision, it appears to have been a uniform practice of the Brotherhood and of all operating unions to write the language of Section 2, Eleventh (c), into their contracts as an exception to the requirement of membership.[3] In any event the reserved intentions or asserted policies of the Brotherhood cannot change the impact of its invalid agreement. There is no basis for indulging in any presumption that the defendants intend to recognize the employees' right to alternate union membership as a means of satisfying the union

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[3] David Levinson, *Union Shop Under the Railway Labor Act*, 6 Lab. Law Journal, 441, 444 (July 1955):

"Terms corresponding to this clause are found, of course, in every lawful union shop agreement covering the operating crafts."

shop obligation. Nor would it be proper to permit the employees to be caught in a maze of legal subtleties by the equivocal stance the Brotherhood takes in this litigation. Indeed its insistence before this Court that employees have no right to alternate union membership as a means of satisfying the union shop obligation but must join the Brotherhood negates any intention to recognize the validity of Section 2, Eleventh (c), of the Railway Labor Act. The deliberate omission of any reference to this crucial statutory provision in the railroad's union shop agreement with the Brotherhood gave the employees no choice except to seek enforcement of their rights by legal means.

The plaintiffs concede that the resolution of their original claim for damages has become moot in view of the issuance of the temporary injunction. The defendants' counterclaim for damages could become an issue only if the contract complained of were held to be valid as a matter of law. Since the issue of the invalidity of the contract clause complained of must be decided in favor of the plaintiffs, the counterclaim for damages must of necessity be dismissed.

The motion of plaintiffs and intervenor-plaintiffs for summary judgment is granted. The motion of defendants for summary judgment is denied.

Submit order on notice consonant herewith.

Dated: New York, N. Y.
July 25, 1967

EDMUND L. PALMIERI
U.S.D.J.

(R. 131-154)

Opinion by Herlands, D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

APPEARANCES:

STURM & PERL, ESQS., (New York)
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—and—

LEE LEIBIK and RUTH WEYAND, ESQS., (Chicago)
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Attorney for Defendant Erie Lackawanna RR Co.

ARNOLD B. ELKIND, ESQ., (New York)
Attorney for Defendants Brotherhood of Railroad Trainmen and W. J. Weil, individually.

HERLANDS, *District Judge:*

The instant motion for a preliminary injunction, brought on by an order to show cause, raises important questions as to the proper interpretation of the 1951 amendments to the Railway Labor Act. Plaintiffs are three yard service employees of the defendant Erie Lackawanna Railroad Company (hereinafter referred to as the Erie), who sue

individually and on behalf of all members of the Switchmen's Union of North America, AFL-CIO, (hereinafter referred to as the Switchmen's Union) employed by the defendant railroad. The Switchmen's Union is also a party plaintiff. The defendants are the Erie, the Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood), and two officers of the Brotherhood who are sued in their individual and representative capacities.

According to the verified complaint, the Delaware, Lackawanna & Western R.R. Co. and the Erie Railroad merged in October, 1960, to form the defendant railroad. For many years prior to the merger the Switchmen's Union had been the duly designated and recognized representative of the craft or class of yard foremen, helpers and switch tenders (hereinafter referred to as yard service employees) of the Delaware, Lackawanna & Western R.R. Co., while the Brotherhood similarly represented the yard service employees of the Erie Railroad.

In March, 1964, the National Mediation Board conducted an election among all of the yard service employees of the merged railroad. The Brotherhood received 43 more votes than the Switchmen's Union, and was designated as their representative. Until March, 1967, the collective bargaining agreement between the Brotherhood and the Erie, like the pre-merger agreements of both the Switchmen's Union and the Brotherhood, contained a union shop clause which was expressly qualified by the language of Section 2, Eleventh (c) of the Railway Labor Act. Under this agreement, more than 500 yard service employees of the Erie maintained membership in the Switchmen's Union without joining the Brotherhood.

On March 14, 1967, the Brotherhood and the Erie entered into a new collective bargaining agreement, effective immediately, which provided that, as a condition of continued employment, all yard service employees in the New York Terminal Yards of the Erie "shall become and remain members" of the Brotherhood. No alternative membership clause was included in the union shop provision.

The essence of plaintiffs' claim is that this strict union shop agreement violates the Railway Labor Act in that it fails to provide—in accordance with Section 2, Eleventh (c) (45 U.S.C. § 152 Eleventh (c))—that the requirement of union membership shall be satisfied if an employee maintains membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, and admitting to membership employees in any of the services or capacities covered by the First Division of the National Railroad Adjustment Board.

The complaint further alleges that the Brotherhood and the Erie "have threatened and are threatening" to discharge the individual plaintiffs and all other members of the Switchmen's Union employed by the Erie, unless they end their membership in the Switchmen's Union and become and remain members of the Brotherhood.

Each of the plaintiffs and the members of the class they represent have seniority rights and other employment benefits which would be lost in the event of a discharge for failure to join the Brotherhood as required by the new agreement. On the other hand, valuable insurance rights would be lost if they failed to continue membership in the Switchmen's Union. Yet, the constitution of the Brotherhood bars dual membership in a union, such as the Switch-

men's Union, which is seeking representation rights on behalf of the same class of employees on the same railroad. Even if they are not discharged for maintaining membership in the Switchmen's Union, they could not afford to pay fees and dues to two unions.

On the basis of these factual allegations, plaintiffs contend that their rights—protected under Section 2 of the Railway Labor Act—are being infringed, and that the defendants have caused and are threatening to cause irreparable injury to the plaintiff employees for which no remedy in money damages is available. They pray for a preliminary and permanent injunction restraining the defendants from "discharging or threatening to discharge, or attempting to cause the discharge" of any employee who fails to join the Brotherhood, so long as he maintains membership in the Switchmen's Union. They also seek a judgment declaring the union shop agreement null and void. Finally, plaintiff Switchmen's Union asks for money damages in the sum of 100,000. dollars.

The Brotherhood's verified answer admits that Exhibit A annexed to the complaint is a true copy of the collective bargaining agreement entered into between the Brotherhood and the Erie, but denies its illegality and denies substantially all of the other allegations of the complaint. Of immediate significance on this motion is defendant Brotherhood's denial that this Court has jurisdiction to construe the collective bargaining agreement, because Congress has vested exclusion jurisdiction over such disputes in the National Railroad Adjustment Board, and to system, group or regional Boards of Adjustment. The Brotherhood further denies that this Court has jurisdiction to determine the legality of the agreement under the Railway

Labor Act until the plaintiff employees have exhausted the procedures of the contract. The Brotherhood's verified answer also contains a counterclaim for libel.

The question of jurisdiction may be disposed of summarily. Plaintiffs invoke the power of this Court under 28 U.S.C. § 1337 conferring original jurisdiction upon this court of civil actions arising under any Act of Congress regulating Commerce, and under 28 U.S.C. § 2201, creating the remedy of declaratory judgments.

While the National Railroad Adjustment Board has exclusive and primary jurisdiction over disputes concerning the meaning of collective bargaining agreements in the railroad industry (*Slocum* v. *Delaware, Lackawanna & Western R.R. Co.*), 339 U.S. 239 (1950), and the instant agreement expressly provides its own procedure in cases of non-compliance with its provisions, it is well settled that the federal district courts have jurisdiction to grant injunctive and declaratory relief when the legality of such an agreement under the Railway Labor Act is called in question. See, e.g., *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768, 774 (1952); *Graham* v. *Brotherhood of Locomotive Firemen & Engineers,* 338 U.S. 232, 239 (1949); *Tunstall* v. *Brotherhood of Locomotive Firemen & Engineers,* 323 U.S. 210, 212-213 (1944); *Switchmen's Union of North America* v. *Southern Pacific Co.,* 253 F.2d 81 (9th Cir.), cert. denied, 358 U.S. 818 (1958).

The present action is governed by the principles expounded by the above decisions. There is here no question as to the proper construction of a collective bargaining agreement or its proper application to specific employees; rather, the issue posed is a straightforward question of statutory interpretation.

Opinion by Herlands, D.J.

The Brotherhood frankly conceded upon oral argument —as it was obviously compelled to do—that the union shop clause[1] of the new collective agreement would violate Section 2, Eleventh (c) of the Railway Labor Act if the latter were construed literally. The Brotherhood contends, however, that the legislative history of the provision in question, and the decisions construing it, unmistakably demonstrate the legality of the disputed agreement in the circumstances here prevailing.

Resolution of the issue posed necessarily depends upon an understanding of the purpose underlying Section 2, Eleventh (c) and the specific means chosen by Congress to effectuate that purpose.

Until 1951, union shop agreements were outlawed in the railroad industry. The prohibition had been added to the Railway Labor Act in 1934 at the behest of the unions themselves because such agreements had been used by the

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[1] The union shop clause of the collective bargaining agreement between the Brotherhood and the Erie reads as follows:

"1. It is agreed, as a condition of continued employment, that within sixty calendar days following the beginning of such employment, all conductors, ticket collectors, baggagemen, and trainmen of the Erie Lackawanna Railroad Company, former DL&W District, yard service employees engaged in yard service in the New York Terminal Yards including Paterson, N.J., Newark, N.J. and Dundee, N.J., Port Jervis, N.Y., Middletown, N.Y., Newburg, N.Y., Syracuse, N.Y., Utica, N.Y., and Scranton, Pa., represented by the Brotherhood of Railroad Trainmen (Eastern District) shall become and remain members of the said Brotherhood: Provided, that this agreement shall not require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership has been denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the Brotherhood of Railroad Trainmen."

railroads to perpetuate company unions. This problem having become dissipated with time, Congress amended the Act in 1951 to permit negotiation of union shop agreements. Section 2, Eleventh (a) (45 U.S.C. § 152 Eleventh (a)).

The provision enacted substantially parallels the law applicable to industry in general under the National Labor Relations Act. (29 U.S.C. §§ 157, 158). Its essential purpose is to permit unions—through agreements with employers—to compel the entire membership of the class of employees represented to bear an equitable portion of the cost of such representation. During the hearings leading to the 1951 amendments, however, the unions called attention to a problem—peculiar to the operating trades in the railroad industry—which would result from introduction of the union shop.

As described by the *Supreme Court in Pennsylvania R.R. Co.* v. *Rychlik*, 352 U.S. 480 (1952):

> "Labor in this industry is organized largely on craft rather than industrial lines. Engineers, firemen, trainmen, switchmen, brakemen and conductors, for example, each are separately organized for the purposes of bargaining. And normally different unions represent different crafts; thus, on the same railroad, firemen might be represented by the Brotherhood of Firemen and Enginemen, and engineers by the Brotherhood of Locomotive Engineers. Yet seasonal and other factors produce a high degree of job mobility for individual employees in the industry, that is, of shuttling back and forth between crafts. For example, a fireman may be temporarily promoted to engineer for a short time or a conductor might have to serve temporarily as

brakeman. Under the ordinary union shop contract, such a change from craft to craft, even though temporary, would mean that the employee would either have to belong to two unions—one representing each of his crafts—or would have to shuttle between unions as he shuttles between jobs. The former alternative would, of course, be expensive and sometimes impossible, while the latter would be complicated and might mean loss of seniority and union benefits." (352 U.S. at 490)

The legislative representative of the defendant Brotherhood proposed an amendment to the bill at the House and Senate committee hearings, which was aimed at accommodating the needs of employees subject to the problem of intercraft mobility. The proposed amendment read as follows:

"provided that when two or more such crafts or classes are closely related as respects the work performed by each and employment rights in more than one of them are held by the same employee, or promotions from one of such crafts or classes to another are had, the requirement for membership shall be satisfied by membership in the organization of the employee's choice, which is the duly designated or recognized craft or class representative of any one of them."

(Hearings before a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 81st Cong., 2nd Sess. on S. 3295, p. 69; Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 81st Cong., 2nd Sess. On H.R. 7789, pp. 32-33.)

On the other hand, the spokesman for the Railway Labor Executives Association—representing twenty one major railway unions including three of the five major unions in the operating trades[2]—urged that the problem of intercraft mobility be left to collective bargaining.

The bill permitting union shop agreements was reported to the Senate without amendment, but the Committee offered an amendment on the Senate floor which read:

> "*Provided further*, that no such (union shop) agreement shall require membership in more than one labor organization." 1950 Cong. Rec., p. 15735

When the Senate again considered the bill after a temporary adjournment, a substitute amendment—drafted at a conference of the railroad labor organizations—was offered[3] and approved. That amendment forms the present Section 2, Eleventh (c), the provision here in controversy. It reads as follows:

> "(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train,

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[2] The three unions are the Switchmen's Union, the Brotherhood of Firemen and Enginemen and the Order of Railway Conductors. The remaining two major unions are the defendant Brotherhood—which had submitted its own proposed amendment—and the Brotherhood of Locomotive Engineers—which had opposed any and all legislation permitting union shop agreements.

These five unions are the only ones represented by members of the First Division of the National Railroad Adjustment Board.

[3] Senator Hill, in explaining the substitute amendment after he had offered it on the floor of the Senate, stated that: "the only purpose of the amendment is to make sure that a person employed by one of the railroads does not have to belong to more than one union." 1950 Cong. Rec. p. 16268.

yard, or hostling service, that is an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services."

I. PLAINTIFFS' PROBABILITY OF SUCCESS

It is the Brotherhood's contention that the explicit language of Section 2, Eleventh (c) is inapplicable here, because "the 'narrow problem of intercraft mobility' does not exist with respect to the employees covered by this contract." The reason given is that "all involved crafts on the railroad are represented by the Brotherhood of Railroad Trainmen and there can be no problem of compulsory dual membership." (Defendant Brotherhood's Memorandum of Law, p. 9.) Correlatively, the Brotherhood argues that, since the Switchmen's Union does not presently serve as authorized bargaining representative for any of the Erie's employees, the plaintiffs here cannot invoke the protection of Section 2, Eleventh (c).

In effect, the Brotherhood is asking for a construction of the statute which conforms to the explicit language of the proposed amendment which the Brotherhood submitted to House and Senate committees during the 1950 hearings on the legislation. That construction would permit an employee—in lieu of joining the labor organization having the union shop agreement—to maintain membership in a labor organization "which is the duly designated or recognized . . . representative of any one of [the crafts or classes in which the employee has employment rights]." Hearings, *supra*. (Emphasis added.)

The recited legislative history demonstrates, however, that the Brotherhood's proposed amendment was not adopted by either of the legislative committees. Rather, the amendment offered and accepted on the floor of the Senate —which forms the present Section 2, Eleventh (c)—was

drafted collectively by the unions themselves.[4] The detailed language of the provision delineates the explicit means for dealing with the problem of intercraft mobility which was chosen by the unions and adopted by Congress.

In the face of this history, it would be a usurpation of the legislative function for this Court to assert that the language does not mean what it says, or that the problem of intercraft mobility ought to be handled by some other approach. While the plain meaning rule is not well regarded in this Circuit,[5] and has very recently been criticized by the Supreme Court in construing labor legislation,[6] the specificity of this particular provision and its legislative history leave little interpretative flexibility.

Most significantly, moreover, we have no reason to doubt that the explicit means delineated by Section 2, Eleventh (c) is the soundest approach to the problem of intercraft mobility.

The Brotherhood argues that Section 2, Eleventh (c) should not be construed to bar strict union shop provisions when the particular factual circumstances do not involve the problem of intercraft mobility. How—as a practical matter—would such a construction of the statute be implemented?

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[4] Until very recently, both the plaintiff Switchmen's Union and the defendant Brotherhood, among others, have expressly conditioned their union shop agreements by the literal terms of Section 2, Eleventh (c). *Cf. NLRB* v. *Drivers Local Union*, 362 U.S. 274, 290 (1960); *United States* v. *American Trucking Ass'ns, Inc.*, 310 U.S. 534, 549 (1940).

[5] See, *e.g.*, *Federal Maritime Commission* v. *DeSmedt*, 366 F.2d 464, 469-70 (2d Cir. 1966); *Monarch Life Ins. Co.* v. *Loyal Protective Life Ins. Co.*, 326 F.2d 841, 845 (2d Cir. 1963); *Cabell* v. *Markham*, 148 F.2d 737, 739 (2d Cir.), *aff'd*, 326 U.S. 404 (1945).

[6] *National Woodwork Mfrs. Ass'n* v. *NLRB*, —— U.S. ——, —— (April 17, 1967) (Slip opinion pp. 5-6).

On each occasion that a strict union shop agreement is executed, the employees who are members of a minority union would be faced with the dilemma with which the instant plaintiffs are confronted. As here, the question of the validity of the agreement inevitably would find its way into the federal courts for an ad hoc adjudication.

But what evidence should be admitted, and what standards should the Court employ in determining the quality and magnitude of the problem of intercraft mobility in a particular situation? Is the Court to make a subjective evaluation of the relatedness of various crafts, the mobility of individual employees, the likelihood of a change in the bargaining representative resulting from shifts in the level of employment, etc.?

While the Brotherhood asserts that a possible standard could be whether the minority union is the designated or recognized representative of any related class or craft, the legislative history indicates that this approach was explicitly suggested to the Congressional committees by the Brotherhood but not adopted by them. It may well be that the railroad unions who drafted this provision collectively, and Congress in adopting their proposal, had chosen the specific approach delineated in Section 2, Eleventh (c)—recognizing that bargaining representatives may change with shifts in the level of employment as employees shuttle between crafts—so as not to upset the balance of union power which existed under the prevalent practice of having substantial enclaves of minority union members existing in the jurisdiction represented by the majority union.

In any event, whatever may be the advantages or disadvantages of other approaches to the problem of intercraft mobility, the means provided by the literal terms of Section 2, Eleventh (c) accommodates the needs of the employees

in the operating crafts without promoting internal warfare between unions. Moreover, the provision—literally construed—reconciles the problem of intercraft mobility with the primary policy underlying the 1951 amendments to allow for an equitable sharing of the cost of representation. For, by limiting alternative membership to those unions which qualify as electors to the First Division of the National Railroad Adjustment Board,[7] membership may be confined to those unions which share the costs of administration of the NRAB, and join together in other respects in negotiating and policing collective bargaining agreements.[8]

Absent specific direction by Congress, it would be most imprudent for the federal courts to reach out to create another approach to the problem of intercraft mobility, and thereby assume the role of referee in interunion power struggles. *Cf., Pennsylvania R.R. Co.* v. *Rychlik*, 352 U.S. 480, 496 (1957).

Rychlik and Rohrer

The Brotherhood purports to find conclusive support for its position here in two decisions construing the controversial provision of law. While broad language in both opinions lends some support to the Brotherhood's argument, neither case squarely raised the issue presently before this Court.

In *Pennsylvania R.R. Co.* v. *Rychlik*, 352 U.S. 480 (1957), an operating employee of the railroad had been discharged

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[7] See n. 2, *supra*.

[8] See Plaintiffs' Memorandum of Law, pp. 18-19; Brief for Petitioner Brotherhood of Railroad Trainmen, p. 30; *Pennsylvania R.R. Co.* v. *Rychlik*, 352 U.S. 480 (1957).

after resigning from the Brotherhood and contemporaneously joining the United Railroad Operating Crafts, a union which he "believed in good faith to be 'national in scope' and 'organized in accordance with' the Act," although it had never qualified as an elector to the First Division of the National Railroad Adjustment Board. The union shop provision of the Brotherhood's collective bargaining agreement was expressly conditioned by the precise language of Section 2, Eleventh (c).

Tracing much of the legislative history, the Court observed that the purpose of Congress was not "to give employees in the railroad industry any blanket right to join unions other than the authorized bargaining representative, or to help dissident or rising new unions to recruit new members" (352 U.S. at 488-89); rather, the very narrow purpose was "to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts." (352 U.S. at 492.)

Inquiring, then, into the "manner in which Congress achieved this purpose," the Court concluded that Section 2, Eleventh (c) did not permit alternative membership in merely "'any' labor organization which was national in scope and organized in accordance with the Act," but only in "such unions as have already qualified as electors to the First Division of the National Railroad Adjustment Board" under Section 3 of the Act. 352 U.S. at 495-96.

While the Brotherhood quotes various passages from the *Rychlik* opinion in support of its present contentions, it is clear that the explicit holding of the decision is not apposite. Moreover, one may—with equal facility—draw inferences from *Rychlik* which are contrary to the Brotherhood's position here.

The other decision relied upon by the Brotherhood is *Rohrer* v. *Conemaugh & Black Lick R.R. Co.*, 359 F.2d 127 (3d Cir. 1966). There, the Brotherhood sat on the other side of the fence, inasmuch as the plaintiff—an employee of the defendant railroad—had been discharged after changing membership from the United Steelworkers of America to the Brotherhood. The Steelworkers union was the designated representative for all crafts and classes of employees on the defendant railroad, a subsidiary of the Bethlehem Steel Corporation—as it was on all other Bethlehem railroad subsidiaries. Its collective bargaining agreement with the defendant railroad contained a strict union shop clause.

Relying upon language in *Rychlik*, the Court of Appeals held that Section 2, Eleventh (c) was inapplicable to the factual situation presented because the plaintiff was "not faced with the dilemma of intercraft mobility." (359 F.2d at 130.) That factual situation, however, is clearly distinguishable from the one now before this Court. Although certification by the National Mediation Board on the Conemaugh & Black Lick R.R.—as on all railroads—is by craft or class, the Steelworkers union in fact represented "all the employees of the Railroad without regard to craft or class delineations." (359 F.2d at 130.) Indeed, the Steelworkers union has been certified as the representative of all employees since 1947, is not a railroad craft union but an industrial union, and has never qualified as an elector to the First Division—or any other division—of the National Railroad Adjustment Board.

Rohrer, therefore, presents a special situation which properly should be limited to its particular facts. To the extent that the decision is persuasive of the Brotherhood's

contentions in the instant litigation, the Court is of the opinion that it should not be followed.

II. Plaintiffs' Irreparable Injury

Plaintiffs having made the "clear showing of probable success"[9] cited by decisions of this Circuit as a prerequisite for the granting of a preliminary injunction, we turn to an examination of those other desiderata which a district court is compelled to evaluate in exercising its sound discretion.[10] In the particular circumstances of this case, primary emphasis must lie with the need to preserve the status quo pending a final determination on the merits.

Here, the individual plaintiffs—and the members of the class they represent—have been caught in the crossfire of an interunion dispute which has been brought to a head by the recently executed union shop agreement. Unless enforcement of the strict union shop clause is temporarily suspended, these employees shortly[11] will be required to choose a course of conduct which may have a crucial and irreversible effect upon their seniority rights, insurance coverage, and other employment benefits. It is neither fair

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[9] *Ames* v. *Associated Musicians*, 359 F.2d 777, 779 (2d Cir. 1966), quoting from *Societe Comptoir De L'Industrie* v. *Alexander's Dep't Store*, 299 F.2d 33, 35 (2d Cir. 1962). The Court of Appeals has stated recently that the "burden is less where the balance of hardships tips decidedly toward the party requesting the temporary relief." *Dino de Laurentiis Cinemalografica, S.p.A.* v. *D-150, Inc.*, 366 F.2d 373, 375 (2d Cir. 1966). *Accord, Unicon Management Corp.* v. *Koppers Co.*, 366 F.2d 199, 204-05 (2d Cir. 1966).

[10] *Santos* v. *Bonanno*, 369 F.2d 369, 370 (2d Cir. 1966); *Huber Baking Co.* v. *Stroehmann Bros. Co.*, 208 F.2d 464, 467 (2d Cir. 1953).

[11] Indeed, while this motion was *sub judice*, the Brotherhood notified employees who were not members of the Brotherhood that they would be cited for non-compliance with the union shop agreement if they failed to make application for membership in the Brotherhood by April 30, 1967.

nor necessary to require these employees to make such a vital decision while their right to maintain membership in the Switchmen's Union alone is being adjudicated. This is particularly so, where the plaintiffs' ultimate rights and remedies may vary markedly according to the course of conduct chosen in the interim. Even if the plaintiffs are eventually successful, their remedy at law may have been rendered wholly inadequate by the course they might choose to protect themselves now.

In sharp contrast, the Brotherhood can show little in the way of potential injury if the defendants are restrained from enforcing the union shop agreement against members of the Switchmen's Union, until the agreement's legality under the Railway Labor Act has been adjudicated. Since the enactment of the 1951 amendments, the Brotherhood has represented crafts and classes of employees on the defendant railroad under union shop provisions explicitly limited by the express language of Section 2, Eleventh (c). No claim has been made on behalf of the Brotherhood that the situation suddenly has become critical, and the Court perceives no precipative circumstance.

Thus, when the present and potential injury to the plaintiffs is weighed against the present and potential injury to the defendants, the balance of convenience inclines heavily on the side of the plaintiffs.[12]

The defendants, singularly and collectively, and their officers, servants and representatives are hereby restrained —pending a final determination of this action—from discharging, or threatening to discharge, or attempting to cause the discharge of the plaintiffs or any other employee of the defendant railroad for failure to join or maintain

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[12] *Rosemont Enterprises, Inc.* v. *Random House, Inc.*, 366 F.2d 303, 310 (2d Cir. 1966).

membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America.

This opinion constitutes the findings of fact and conclusions of law required under Rules 52 and 65 of the Federal Rules of Civil Procedure.

So ordered.

Dated: New York, N.Y.
April 27, 1967.

WILLIAM B. HERLANDS
U.S.D.J.

(R. 1-17)

Verified Complaint for Injunction, Declaratory Judgment and Damages

IN THE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JOHN P. O'CONNELL, R. A. GALLO, and CHARLES DOYLE, individually and in behalf of all members of the SWITCHMEN'S UNION, who are employed by the ERIE LACKAWANNA RAILROAD COMPANY, and SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO, an unincorporated association,

Plaintiffs,

—v.—

ERIE LACKAWANNA RAILROAD COMPANY, a corporation, the BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association and GRIFF DAVIS, individually and as General Chairman of the BROTHERHOOD OF RAILROAD TRAINMEN, and W. J. WEIL, individually and in behalf of all members of the BROTHERHOOD OF RAILROAD TRAINMEN,

Defendants.

This is a complaint for injunction, declaratory judgment and damages. This Court has jurisdiction of this complaint under United States Code, Title 28, Section 1337, conferring original jurisdiction upon this Court of any civil action or proceeding arising under any act of Congress regulating commerce, the cause of action herein stated being one for the violation of certain of plaintiffs' rights under the Railway Labor Act, as amended, 45 U.S.C. 151,

et seq. This Court has jurisdiction to grant the declaratory judgment herein prayed pursuant to Section 2201 of the Judicial Code, 28 U.S.C. 2201. The defendant, Erie Lackawanna Railroad Company, operates railroad lines into and out of New York City, within this district. The contract which has been entered into and which the defendants are threatening to apply, in violation of the Railway Labor Act, as hereinafter set forth, is applicable to employees working within this district and defendants have threatened to commit the acts complained of within this district.

1. The plaintiff John P. O'Connell is now, and has for the past five years been, employed by the defendant railroad as a yard service employee. Prior to the merger of the Delaware, Lackawanna & Western R.R. Co. and the Erie Railroad in October 1960 to form the defendant railroad, the plaintiff John P. O'Connell had been employed by the Erie Railroad for 20 years. He is now, and at all times for the past 15 years has been, a member of the plaintiff Switchmen's Union.

2. The plaintiff R. A. Gallo is now, and for the past five years has been, employed by the defendant railroad as a yard service employee. Prior to the merger of the Delaware Lackawanna & Western R.R. Co. and the Erie Railroad in October 1960 to form the defendant railroad the plaintiff R. A. Gallo had been employed by the Delaware Lackawanna & Western R.R. Co. for 26 years. He is now, and at all times for the past 29 years has been, a member of the plaintiff Switchmen's Union.

3. The plaintiff Charles Doyle is now, and for the past five years has been, employed by the defendant railroad as

a yard service employee. Prior to the merger of the Delaware, Lackawanna & Western R.R. Co. and the Erie Railroad in October 1960 to form the defendant railroad the plaintiff Charles Doyle had been employed by the Erie Railroad for 14 years. He is now, and at all times for the past 15 years has been, a member of the plaintiff Switchmen's Union.

4. The members of the plaintiff Switchmen's Union of North America, AFL-CIO, who are employed by the defendant Erie Lackawanna Railroad Company, exceed 500 in number and constitute a class composed of persons so numerous as to make it impossible to bring them before the court in person. The plaintiffs John P. O'Connell, R. A. Gallo and Charles Doyle are members of this class who will fairly insure the adequate representation of all members of the class for the purpose of this suit.

5. The plaintiff Switchmen's Union of North America, AFL-CIO, is an unincorporated association having its national office and headquarters at 3 Linwood Avenue, Buffalo 2, New York. The plaintiff Switchmen's Union of North America is a labor organization national in scope, organized in accordance with the provisions of Section 2 of the Railway Labor Act, as amended (45 U.S.C. 152) and as such has continuously since adoption of the 1934 amendments to the Railway Labor Act (48 Stat. 926), participated in the selection and designation of the labor members of the National Railroad Adjustment Board.

6. The defendants Griff Davis and W. J. Weil are respectively the General Chairman and the Vice-President of

the Brotherhood of Railroad Trainmen, and are sued both individually and as representatives of a class composed of all the members of the Brotherhood of Railroad Trainmen. The members of the Brotherhood of Railroad Trainmen are so numerous as to make it impossible to bring them all before the court in person. The defendants Griff Davis and W. J. Weil, as officers and members of said labor organization, will fairly ensure the adequate representation of members for the purpose of this suit.

7. The defendant Erie Railroad Company is a corporation organized and existing within the laws of New York and is a carrier within the meaning of Section 1 of the Railway Labor Act, as amended (45 U.S.C. 151).

8. For many years prior to the merger of the Delaware, Lackawanna & Western R.R. Co. and the Erie Railroad in October 1960 the plaintiff Switchmen's Union had been the duly designated and recognized representative of the yard service employees employed by the Delaware, Lackawanna & Western R.R. Co. and held the contract for the craft or class of yard foremen, helpers and switchtenders employed by the Delaware, Lackawanna & Western R.R. Co. Prior to the merger the defendant Brotherhood of Railroad Trainmen had been the duly designated and recognized representative of the yard service employees employed by the Erie R.R. Co. and held the contract for the craft or class of yard foremen, helpers and switchtenders employed by the Erie R.R. Co.

9. In 1953 and at all times thereafter until the merger both the plaintiff Switchmen's Union's contract with the Delaware Lackawanna & Western R.R. Co. and the defendant Brotherhood of Railroad Trainmen's contract with the

Erie R.R. Co. contained union shop provisions which conformed in all respects to the provisions of Section 2, Eleventh of the Railway Labor Act as amended (45 U.S.C. 152, Eleventh) and contained the express provision that membership in any one of the labor organizations national in scope, organized in accordance with the Railway Labor Act, and admitting to membership employees in any of the services or capacities covered by the first Division of the National Railroad Adjustment Board should satisfy the requirements for membership of the union shop provisions. The union shop provisions of the defendant Brotherhood of Railroad Trainmen's contract was at all times construed and applied so that membership in the plaintiff Switchmen's Union satisfied the requirement for membership. The union shop provisions of the plaintiff Switchmen's Union's contract was at all times construed and applied so that membership in the defendant Brotherhood of Trainmen satisfied the requirement for membership.

10. In March 1964 the National Mediation Board conducted an election among all the yard service employees of the merged railroads which was won by the defendant Brotherhood of Railroad Trainmen which received 43 votes more than the plaintiff Switchmen's Union. The defendant Brotherhood of Railroad Trainmen and the defendant Erie Lackawanna Railroad Company from 1964 until March 14, 1967 construed and applied the union shop provisions of the Trainmen's contract with the defendant railroad as satisfied by membership in the Switchmen's Union and more than 500 employees of the defendant railroad employed in the craft or class of yard foremen, helper and switchtender continued at all times to be members of the plaintiff Switch-

men's Union and did not join or maintain membership in the defendant Brotherhood of Railroad Trainmen.

11. On March 14, 1967 the defendant Erie Lackawanna Railroad Company and the defendant Brotherhood of Railroad Trainmen entered into a collective bargaining agreement effective immediately which required all yard service employees engaged in yard service in the New York Terminal Yards, including Paterson, N. J., Newark, N. J. and Dundee, N. J., Port Jervis, N. Y., Middletown, N. Y., Newburg, N. Y., Syracuse, N. Y., Utica, N. Y. and Scranton, Pa., as a condition of continued employment to become and remain members of the defendant Brotherhood of Railroad Trainmen, a copy of said agreement being attached hereto marked Exhibit A and made a part hereof. Said agreement is illegal and contrary to the provisions of Section 2, Third, Fourth, Fifth and Eleventh of the Railway Labor Act (45 U.S.C. 152, Third, Fourth, Fifth and Eleventh) in that it fails to contain the provisions set forth in Section 2, Eleventh (c) of the Railway Labor Act which require that membership in any other union national in scope organized in accordance with the Railway Labor Act, which admits employees in yard service to membership shall satisfy the requirement of membership in a labor organization which has a union shop agreement. The defendants Brotherhood of Railroad Trainmen and Erie Lackawanna Railroad Company have threatened and are threatening to discharge the plaintiff John P. O'Connell, R. A. Gallo and Charles Doyle and all the other members of the plaintiff Switchmen's Union who are employed by defendant railroad unless they cease to be members of the plaintiff Switchmen's Union and become and remain members of the defendant Brotherhood

of Railroad Trainmen. By entering into said union shop agreement and by threatening such discharges the defendants and each of them have violated and are threatening to violate Section 2, Third, Fourth, Fifth and Eleventh of the Railway Labor Act (45 U.S.C. 152, Third, Fourth, Fifth and Eleventh).

12. Said agreement by its terms is effective on March 14, 1967. Unless this Court enters a restraining order protecting the plaintiffs John P. O'Connell, R. A. Gallo and Charles Doyle and the other 500 employees of the defendant railroad from loss of their jobs for failure to join the defendant Brotherhood of Railroad Trainmen, the plaintiffs will be denied their right under the Railway Labor Act to join and be members of the labor organization of their free choice without coercion or restraint by their employer.

13. The constitution of the defendant Brotherhood of Railroad Trainmen, by Section 132, thereof, as more fully appears from a copy of such provision of the constitution of the Brotherhood of Railroad Trainmen as amended in 1964, a copy of which is attached hereto marked Exhibit B and made a part hereof, would not permit the plaintiffs or any other members of the Switchmen's Union to become and remain members of the defendant Brotherhood of Railroad Trainmen because said Switchmen's Union is actively engaged in seeking to gain representation rights for the yard service employees employed by the defendant Erie Lackawanna Railroad Company and now represented by the defendant Brotherhood of Railroad Trainmen.

14. Many of the plaintiffs and the class they represent hold valuable insurance rights which depend on their con-

tinued membership in the plaintiff Switchmen's Union, many of them being insured in the Equitable Life Assurance Society under Policy A D S D 16222 issued to them as members of the plaintiff Switchmen's Union and otherwise insured under Aetna Group Policy 7 - 47350, also issued to them as members of the plaintiff Switchmen's Union, all of which constitute valuable property rights which will be lost if they are required to comply with the terms of the above described agreement dated March 14, 1967, which requires them to join the defendant Brotherhood of Railroad Trainmen. Many of the plaintiffs and the class they represent who hold insurance as members of the plaintiff Switchmen's Union will be unable to secure additional or other insurance, and will be left without any insurance if they are required to cease being members of the plaintiff Switchmen's Union.

15. The defendant Erie Lackawanna Railroad Company has threatened to discharge the individual plaintiffs and the members of the class they represent and each of them if they do not join and remain members of the defendant Brotherhood of Railroad Trainmen, all of which threats are in violation of Section 2 of the Railway Labor Act as amended.

16. The defendant Erie Lackawanna Railroad Company violated Section 2, Fifth of the Railway Labor Act by entering into an agreement with the defendant Brotherhood of Railroad Trainmen requiring the plaintiffs and the members of the class they represent to join and remain members of the defendant Brotherhood of Railroad Trainmen.

17. The requirement that the plaintiff and the other members of the class they represent must join and maintain

membership in the defendant Brotherhood of Railroad Trainmen as a condition of employment deprives said persons and each of them of the right to join and remain members of the union of their own choice. Even if the constitution of the defendant Trainmen's Union is not enforced to expel from the Trainmen or deny membership in the Trainmen to plaintiffs and members of the class they represent because of membership in the Switchmen's Union, the plaintiffs and the members of the class they represent cannot afford to pay initiation fees and dues to two unions.

18. Each of the plaintiffs and each of the other members of the class they represent has seniority rights entitling him to preferential employment by the defendant railroad which constitute valuable property rights which will be lost in the event of a discharge for failure to join and maintain membership in the defendant Brotherhood of Trainmen as required by said agreement of March 14, 1967.

19. The plaintiff Switchmen's Union of North America is a labor organization engaged in representing employees in yard service on carriers throughout the United States, and as such it and its members are protected by Section 2 of the Railway Labor Act, as amended, from acts of carriers, including the defendant Erie, Lackawanna Railroad Company, which interfere with or coerce employees, including the plaintiff employees and the other members of the class they represent in exercise of their right to join and designate the Switchmen's Union as their representative.

20. The membership of the plaintiff employees in the plaintiff Switchmen's Union constitutes a valuable contract

and property right of each of the plaintiffs and the conduct of the defendants and each of them has unlawfully interfered with such contract and property rights.

21. The conduct of the defendants and each of them has caused and threatens to cause each of the plaintiffs and each of the members of the class they represent irreparable injury for which no remedy in damages is available.

22. The conduct of each of the defendants has caused the plaintiff Switchmen's Union of North America damages in that employees on the defendant railroad and other employees on all railroads where the Brotherhood of Railroad Trainmen hold contracts have become afraid that they will lose their jobs unless they cease being members of the Switchmen's Union and join the defendant Railroad Trainmen and have become afraid to join the Switchmen's Union for fear of loss of their jobs, all of which has caused the plaintiff Switchmen's Union damages in the sum of One Hundred Thousand Dollars.

WHEREFORE, the plaintiffs pray:

1. That this Court issue a temporary restraining order pending hearing on the motion for preliminary injunction and issue a preliminary injunction pending hearing on the merits and then a permanent injunction restraining the defendants, and each of them, and their officers, agents, servants and representatives from discharging, or threatening to discharge, or attempting to cause the discharge of the plaintiffs or any other employee of the defendant railroad for failure to join or maintain membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America.

2. That this Court declare that the agreement dated March 14, 1967 between the Erie Lackawanna Railroad Company and the Brotherhood of Railroad Trainmen violates Section 2, Fifth and Eleventh (c) of the Railway Labor Act, as amended, and hence is null and void and of no effect.

3. That the Court award plaintiff Switchmen's Union of North America damages in the sum of One Hundred Thousand Dollars against the defendants Brotherhood of Railroad Trainmen and Erie Lackawanna Railroad Company and each of them.

4. That the Court award the plaintiffs attorney's fees, costs, expenses and such other and further relief as the case may require.

ALAN F. PERL
150 Broadway
New York City

LEE LEIBIK
RUTH WEYAND
343 South Dearborn Street
Chicago, Illinois 60604

Dated: this 31st day of March, 1967

(Duly Verified March 31, 1967.)

Exhibit A Annexed to Complaint

Memorandum of Agreement

Between

The Erie Lackawanna Railroad Company

And Its Employees Represented By

The Brotherhood of Railroad Trainmen

(Eastern District)

1. It is agreed, as a condition of continued employment, that within sixty calendar days following the beginning of such employment, all conductors, ticket collectors, baggagemen, and trainmen of the Erie Lackawanna Railroad Company, former DL&W District, yard service employees engaged in yard service in the New York Terminal Yards including Paterson, N. J., Newark, N. J. and Dundee, N. J., Port Jervis, N. Y., Middletown, N. Y., Newburg, N. Y., Syracuse, N. Y., Utica, N. Y., and Scranton, Pa., represented by the Brotherhood of Railroad Trainmen (Eastern District) shall become and remain members of the said Brotherhood: Provided, that this agreement shall not require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership has been denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the Brotherhood of Railroad Trainmen.

Exhibit A Annexed to Complaint

2. Every employee shall be considered by the Erie Lackawanna Railroad Company to be either a member of the Brotherhood as provided for herein, or as having been denied membership in the Brotherhood, unless the Company is advised to the contrary in writing. The Brotherhood of Railroad Trainmen shall be responsible for initiating action to enforce the terms of this agreement.

3. Employees promoted to official or other positions who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this agreement; provided, that if such employee shall have terminated membership during their official capacity, they shall, when returning to service represented by the Brotherhood of Railroad Trainmen (Eastern District), come under the provisions of Item 1 of this agreement.

4. Employees furloughed through reduction in force, sickness or leave of absence, etc., who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this agreement, but shall, upon resumption of employment, come under Item 1 of this agreement.

5. The seniority status and rights of employees furloughed to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this agreement but shall, upon resumption of employment, come under Item 1 of this agreement.

Exhibit A Annexed to Complaint

6. An employee retired on disability annuity under the Railroad Retirement Act at an age earlier than 65 and who retains seniority until he reaches the age of 65, shall not have his seniority status and rights terminated by reason of non-compliance with the provisions of this agreement. If employee returns to active service, he shall come under Item 1 of this agreement.

7. Notice of alleged non-compliance with the provisions of this agreement of an individual employee coming under Item 1 of this agreement shall be given in writing by the General Chairman (or his designated representative) of the Brotherhood of Railroad Trainmen (Eastern District) to the Superintendent not earlier than the expiration of the sixty calendar day period from the date of employment. If after hearing, as provided for in Item 8 hereof, it is determined that the seniority of such employee is to be terminated by reason of non-compliance with the provisions of this agreement, such termination will not be required to be effected until such time as a qualified replacement is available.

8. (a) Release of any employee from the service of the Erie Lackawanna Railroad Company and/or the termination of seniority rights and employment relationship because of non-compliance with the provisions of this agreement shall not be made without written notice. Hearing will be granted if the employee so requests in writing within ten (10) days from receipt of such notice and hearing will be held within ten (10) days from date of receipt of employee's request. A decision shall be rendered within twenty (20) days from date of hearing.

Exhibit A Annexed to Complaint

(b) Discipline rules contained in existing agreements between the Erie Lackawanna Railroad Company and the Brotherhood of Railroad Trainmen (Eastern District) will not apply to cases arising under this agreement.

9. Employees whose services are terminated for non-compliance with the provisions of this agreement shall be regarded as having terminated their employee relationship.

10. An employee dropped from the service, as provided for in Item 8 hereof, account of non-compliance with the provisions of this agreement shall not thereafter be restored to the service except as a new employee.

11. (a) For the sole purpose of handling and disposing of disputes arising under this agreement, a Special Board of Adjustment is hereby established, in accordance with Section 3, Second, of the Railway Labor Act, as amended, which shall consist of two members, one to be appointed by the Erie Lackawanna Railroad Company and one by the Brotherhood of Railroad Trainmen.

(b) After hearing is granted under Item 8 hereof, an employee who is notified that he has failed to comply with the membership requirements of this agreement and who wishes to dispute the fact of such failure shall be given a hearing if he submits a request in writing to the General Manager-Labor Relations within a period of ten (10) calendar days from the date of receipt of decision rendered under Item 8. The employee will be notified in writing of the time and place at which such hearing will be held.

Exhibit A Annexed to Complaint

(c) The decision of the Special Board of Adjustment shall be by majority vote and shall be final and binding.

(d) In the event the Special Board of Adjustment is unable to reach a decision, the matter will be submitted to a neutral arbitrator to be selected by the parties or the National Mediation Board, whose decision as to whether or not the employee has complied with the provisions of this agreement shall be final and binding.

(e) Receipt by the Erie Lackawanna Railroad Company of notice from an employee that he wishes to dispute the charge that he has failed to comply with the membership requirements of this agreement shall operate to stay action on the termination of his seniority and employment pending final decision and for a period of ten (10) calendar days thereafter.

12. The time periods specified in this agreement may be extended in individual cases by written agreement between the Erie Lackawanna Railroad Company and the Brotherhood of Railroad Trainmen (Eastern District).

13. No part of this agreement shall be used in any manner whatosever as a basis for a grievance or time claim by or on behalf of any employee; and no part of the schedule agreement covering rates of pay and working conditions shall be used as a basis for a grievance or time claim by or on behalf of any employee predicated upon an alleged violation, misapplication or non-compliance with any part of this agreement relating to Union Shop.

14. This agreement is in full, final and complete settlement of the dispute growing out of the request contained in

the notice served on the Erie Lackawanna Railroad Company on January 30, 1967 by the Brotherhood of Railroad Trainmen (Eastern District). This agreement shall become effective March 14, 1967 and shall remain in effect until revised or cancelled in accordance with the provisions of the Railway Labor Act, as amended.

FOR THE EMPLOYEES REPRESENTED
BY THE BROTHERHOOD OF RAILROAD
TRAINMEN (EASTERN DISTRICT)

/s/ GRIFF DAVIS
GRIFF DAVIS
General Chairman

FOR THE ERIE LACKAWANNA
RAILROAD COMPANY

/s/ R. A. CARROLL
R. A. CARROLL
General Manager-
Labor Relations

APPROVED:

/s/ W. J. WEIL
W. J. WEIL
Vice President

Cleveland, Ohio

Date: March 14, 1967

Exhibit B Annexed to Complaint

CONSTITUTION

BROTHERHOOD OF RAILROAD TRAINMEN

Effective January 1, 1965

Page 96 — Sec. 132

"A member employed in the class of service covered by a Brotherhood contract with his employer, who joins or becomes a member of any other labor organization that contends to represent employes in such service on such property, shall be expelled.

"A member who influences or attempts to influence any member to join another labor organization that presumes or contends to represent the class of employes represented by the Brotherhood, shall be expelled."

(R. 18-38)

Verified Answer of The Brotherhood of Railroad Trainmen, and W. J. Weil

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The Brotherhood of Railroad Trainmen, an unincorporated association, and W. J. Weil, individually and in behalf of all members of the Brotherhood of Railroad Trainmen, two of the defendants above named, by their attorney, Arnold B. Elkind, as and for an answer to the complaint herein allege as follows:

1. Answering the introductory paragraph of the complaint, these defendants deny that this Court has jurisdiction over those parts of the complaint which advance a construction of the provisions of a collective bargaining agreement because Congress has granted exclusive jurisdiction over these matters to the National Railroad Adjustment Board, *Slocum* v. *Delaware, Lackawanna & Western Ry. Co.*, 339 U.S. 239, and to system, group or regional Boards of Adjustment as authorized by Public Law 89-456, §§1, 2, 80 Stat. 208, 209; June 20, 1966.

Further answering the introductory paragraph of the complaint, these defendants deny that this Court has jurisdiction to determine whether the terms of the collective bargaining agreement comply with the provisions of the Railway Labor Act, 45 U.S.C. §151 *et seq.*, until after the individually named employee-plaintiffs have exhausted the procedures of the contract.

Verified Answer of The Brotherhood of Railroad Trainmen, and W. J. Weil

Further answering the introductory paragraph of the complaint, these defendants deny that the collective bargaining agreement entered into on March 14, 1967 violates any provision of the Railway Labor Act, or any other Federal statute.

2. Deny knowledge or information sufficient to form a belief as to each and every allegation of paragraphs 1, 2, 3, 4, 5, 14 and 15 of the complaint herein.

3. Admit that the defendants, Griff Davis and W. J. Weil, are respectively the General Chairman and the Vice President of the Brotherhood of Railroad Trainmen, and that the members of the Brotherhood of Railroad Trainmen are so numerous as to make it impossible to bring them all before the Court in person, but otherwise deny the allegations of paragraph 6 of the complaint herein.

4. Deny that the Switchmen's Union of North America has ever been the duly designated and recognized representative of employees of the Erie Lackawanna Railroad Company, and allege that the Brotherhood of Railroad Trainmen, pursuant to an election conducted by the National Mediation Board in March of 1964, is the duly certified representative of all yard service employees of the Erie Lackawanna Railroad Company and has, since 1964, been the duly certified collective bargaining representative for all employees of the defendant railroad employed in the craft or class of yard foremen, helpers, switchtenders, including many employees who pay dues to the Switchmen's Union and who have not paid dues to the Brotherhood of Railroad Trainmen, and except for these allegations these defendants deny knowledge or information as to the alle-

gations contained in paragraphs 8, 9 and 10 of the complaint herein.

5. Admit that Exhibit A annexed to the complaint is a true copy of an agreement entered into between the defendant, Brotherhood of Railroad Trainmen, and the defendant, Erie Lackawanna Railroad Company, and otherwise deny each and every allegation of paragraph 11 of the complaint herein.

6. Deny paragraphs of the complaint herein numbered 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, and each and every allegation thereof.

As and for a First Affirmative Defense

7. These defendants allege that the complaint herein fails to state a claim upon which relief can be granted.

As and for a Second Affirmative Defense

8. These defendants allege that the matters complained of involve the interpretation or application of a collective bargaining contract which provides for arbitration of disputes arising thereunder in accordance with the terms thereof, and these arbitration procedures constitute the sole and exclusive remedy for the individual plaintiffs.

As and for a Third Affirmative Defense

9. That insofar as the matters complained of involve an interpretation of the Constitution of the Brotherhood of Railroad Trainmen, said Constitution provides for a system of hearings, appeals and administrative remedies within

the Brotherhood of Railroad Trainmen, and the plaintiffs have failed to exhaust their administrative remedies, and this Court therefore has no jurisdiction over the subject matter thereof.

As and for a Fourth Affirmative Defense and By Way of Counterclaim

10. That at all times herein material the Brotherhood of Railroad Trainmen was an unincorporated association and a labor organization engaging in collective bargaining in the railroad industry, and the plaintiff, Switchmen's Union of North America, was an unincorporated association and a labor organization engaging in collective bargaining in the railroad industry.

11. That at all times herein material, and since March of 1964, the Brotherhood of Railroad Trainmen has been the duly certified collective bargaining representative of the yard men, switchtenders, conductors, ticket collectors, baggage men, trainmen and yard service employees on the Erie Lackawanna Railroad Company, and has expended in the past, and will continue to expend in the future, substantial sums of money for the negotiation of agreements affecting the working conditions, wages, fringe benefits, penalty payments, operating rules, disciplinary rules, roster agreements, implementation agreements, legislative activities, appeals involving interpretation of rules, representation of employees charged with violations of company rules, representation of employees having grievances against management, and the like. To support these expenses the Brotherhood of Railroad Trainmen charges dues and assessments which are paid by members of the Brotherhood of Railroad Trainmen.

12. That the Switchmen's Union of North America at no time herein material has been the collective bargaining agent for the employees represented by the Brotherhood of Railroad Trainmen, but has nevertheless competed with the Brotherhood for membership among the employees represented by the Brotherhood of Railroad Trainmen, offering them as an inducement to membership the fact that the dues requirements are lower than those paid by members of the Brotherhood of Railroad Trainmen.

13. That on or about the 31st day of March, 1967, the plaintiff, Switchmen's Union of North America, wilfully and maliciously published false, defamatory and libelous statements concerning the Brotherhood of Railroad Trainmen, in which a union shop agreement was described as a "Slave Labor Agreement", and in which it was said that the agreement "is intended to place all yard and train service employees in 'Bondage' and deny them their democratic right of belonging to a Union of their choice", and in which it was said that the BRT "now intend to totally destroy the last vestige of what little democracy may have existed in an Organization already laden with dictatorial policy", and in which a false copy of the union shop agreement was annexed, omitting therefrom all individual safeguards negotiated as a part of said union shop agreement for the members of the Switchmen's Union of North America affected thereby. A true copy of the libel of March 31, 1967 is annexed hereto as Exhibit A.

14. That on or about February 15, 1967 the plaintiff, John P. O'Connell, on behalf of the Switchmen's Union of North America, wilfully and maliciously published, and

thereafter circulated amongst the employees of the Erie Lackawanna Railroad Company, a certain letter describing a similar union shop agreement, since held legal by the U.S. District Court in Chicago, Illinois, as a BRT slave labor agreement, and untruthfully and maliciously asserting that said agreement made Switchmen slaves to the Brotherhood of Railroad Trainmen, and untruthfully alleging that "Under this 'Slave Labor Agreement' the BRT becomes a dictator over your wages and working conditions", and asserting that an immediate representation election would soon be sought so that employees "can escape the forced servitude of a BRT 'Slave Labor Agreement' ", and that "It is no longer a choice of which Union—but a choice of Freedom or Dictatorship". A true copy of said libelous letter of February 15, 1967 is annexed hereto as Exhibit B.

15. That on and after February 13, 1967 the Switchmen's Union of North America, through its President, caused to have circulated amongst the employees of the Erie Lackawanna Railroad a certain letter dated February 13, 1967 addressed to the members of the Switchmen's Union employed by the Milwaukee Railroad, in which the union shop agreement was described as a slave labor agreement and in which the said Switchmen's Union described membership in the Brotherhood of Railroad Trainmen as "Dictatorship with no voice in the affairs of their Union". A true copy of the libelous statement of February 13, 1967 is annexed hereto as Exhibit C.

16. That the aforesaid statements by the Switchmen's Union of North America and by the plaintiff, John P.

O'Connell, were false and known to be false, and were made by the plaintiffs for the malicious purpose of discrediting the Brotherhood of Railroad Trainmen as responsible collective bargaining agent with the dues paying employees represented by the Brotherhood of Railroad Trainmen and belonging to the Brotherhood of Railroad Trainmen, and for the further malicious purpose of discouraging members of the Switchmen's Union of North America from joining the Brotherhood of Railroad Trainmen.

17. That prior to the aforesaid publications by the Switchmen's Union of North America, and for many years, the Brotherhood of Railroad Trainmen has enjoyed a reputation in the railroad industry and amongst employees for performing their duties as collective bargaining representatives in a lawful, ethical and professional manner and in such a way as to carry out the normal collective bargaining objectives of improving wages, working conditions and job security for the railroad workers who they represent, and for handling their grievances in a proper and professional manner, and for seeking appropriate legislative and administrative relief in those situations requiring legislative and administrative relief, and for conducting its internal affairs in a constitutional and democratic way and in accordance with all existing laws and regulations having application to unincorporated associations engaged in collective bargaining in the railroad industry.

18. That the aforesaid libelous statements falsely accused the Brotherhood of Railroad Trainmen of enslaving its members and of being dictatorial, and of an intent to discharge employees for belonging to the Switchmen's Union of North America.

19. That the aforesaid libelous statements thereby accused the Brotherhood of Railroad Trainmen of violating the laws of the United States pertaining to labor unions, and accused them of violating the 13th Amendment of the Constitution of the United States prohibiting involuntary servitude and slavery, and further inferred that the defendant, Brotherhood of Railroad Trainmen, was not carrying out its lawful function as a collective bargaining agent.

20. That the Brotherhood of Railroad Trainmen has been damaged in its professional reputation as collective bargaining agents by reason of the aforesaid wilful and malicious libels.

21. That the Brotherhood of Railroad Trainmen has sustained, and will continue to sustain, damage as a result of the libelous statements of the Switchmen's Union of North America and John P. O'Connell, and has expended, and will be required to expend, substantial sums of money to maintain its position as the duly certified collective bargaining representative of the employees of the Erie Lackawanna Railroad and of other railroads throughout the United States, and the Brotherhood of Railroad Trainmen has been otherwise damaged by reason of the libels of the plaintiffs as aforesaid.

22. That the Brotherhood of Railroad Trainmen is entitled to punitive damages from the plaintiff, Switchmen's Union of North America, in the sum of $300,000.00; upon information and belief, the treasury of said unincorporated association had a balance of approximately $400,000.00 according to its latest report, but may assess

its members for additional amounts should the need require.

23. That the Brotherhood of Railroad Trainmen estimates that it has been damaged by said libels and by the repercussions thereof in the sum of $100,000.00.

WHEREFORE, the defendants, Brotherhood of Railroad Trainmen and W. J. Weil, demand judgment denying all requested injunctive relief and dismissing the complaint, with costs and attorneys fees, and the defendant, Brotherhood of Railroad Trainmen, demands judgment against the Switchmen's Union of North America in the sum of Four Hundred Thousand ($400,000.00) Dollars, together with the costs and disbursements of this action, and against John P. O'Connell in the sum of One Hundred Thousand ($100,000.00) Dollars, together with the costs and disbursements of this action.

ARNOLD B. ELKIND
Attorney for Defendants, Brotherhood of Railroad Trainmen and W. J. Weil
122 East 42nd Street
New York, N. Y. 10017
YUkon 6-4921

(Duly Verified April 5, 1967.)

Exhibit "A" Annexed to Answer

(EMBLEM)

SWITCHMEN'S UNION
OF NORTH AMERICA—A.F.L.—C.I.O.

HEADQUARTERS
3 LINWOOD AVE. • BUFFALO, N. Y. 14202

March 31, 1967

MEMBERS-SWITCHMEN'S UNION
EMPLOYED BY ERIE-LACKAWANNA RAILROAD

Dear Sirs and Brothers:

A new type of Union Shop Agreement was recently negotiated by the BRT with Management of the Erie-Lackawanna Railroad (Lines East) which is as we understand it will become effective May 1, 1967. The BRT call it a "Union Security Agreement". The Switchmen call it a "Slave Labor Agreement" since the Agreement is intended to place all yard and train service employees in "Bondage" and deny them their democratic right of belonging to a Union of their choice.

In general the provisions of this "Slave Labor Agreement" are intended to require that Switchmen (yardmen) employed on the Erie-Lackawanna (Lines East) must become and remain members of the BRT through their remaining years of employment with the Erie-Lackawanna Railroad.

The Agreement is negotiated only for the purpose of perpetuating the BRT in office through compulsion. Thus, they (BRT) now intend to totally destroy the last vestige of what little democracy may have existed in an Organization already laden with dictatorial policy.

Exhibit "A" Annexed to Answer

The Switchmen's Union is filing a law suit on the basis that the Agreement violates Section 2, Eleventh of the Railway Labor Act which has for the past fifteen years legally permitted Operating Employees in the Railroad industry a choice of belonging to a Union, national in scope, organized in accordance wtih the Railway Labor Act and admitting to membership employees of the craft or class.

The Switchmen's Union will move initially for an order to restrain the application of the Agreement until the Courts have had an opportunity to determine the legality of the Agreement.

We cannot advise you at this date whether the Court will issue a restraining order. However, we will advise you by letter prior to May 1, 1967 the effective date of the Agreement, if we have been successful in restraining the application of the Agreement and if not—what your personal course of action should be.

We have attached hereto a copy of the pertinent part of the BRT "Slave Labor Agreement" which applies to Erie-Lackawanna Switchmen (Yardmen) (Lines East) who are employed in the following yards: Hoboken, Jersey City, Syracuse, Utica and Scranton.

Although this Agreement does not presently apply on Lines West, you can expect BRT to continue to follow this policy until they are estopped by the Courts.

Fraternally yours,

/s/ VINCENT MASTRONARDI
Vincent Mastronardi
General Chairman

Enc.

Exhibit "A" Annexed to Answer

MEMORANDUM OF AGREEMENT

Between

THE ERIE LACKAWANNA RAILROAD COMPANY

And Its Employees Represented By

THE BROTHERHOOD OF RAILROAD TRAINMEN

(Eastern District)

1. It is agreed, as a condition of continued employment, that within sixty calendar days following the beginning of such employment, all conductors, ticket collectors, baggagemen, and trainmen of the Erie Lackawanna Railroad Company, former DL&W District, yard service employees engaged in yard service in the New York Terminal Yards including Paterson, N. J., Newark, N. J. and Dundee, N. J., Port Jervis, N. Y., Middletown, N. Y., Newburg, N. Y., Syracuse, N. Y., Utica, N. Y., and Scranton, Pa., represented by the Brotherhood of Railroad Trainmen (Eastern District) shall become and remain members of the said Brotherhood: Provided, that this agreement shall not require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership has been denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the Brotherhood of Railroad Trainmen.

Exhibit "A" Annexed to Answer

FOR THE ERIE LACKAWANNA
RAILROAD COMPANY

/s/ R. A. CARROLL
R. A. Carroll
General Manager-
Labor Relations

FOR THE EMPLOYEES REPRESENTED
BY THE BROTHERHOOD OF
RAILROAD TRAINMEN
(EASTERN DISTRICT)

/s/ GRIFF DAVIS
Griff Davis
General Chairman

APPROVED:

/s/ W. J. WEIL
W. J. Weil
Vice President

Cleveland, Ohio

Date: March 14, 1967

Exhibit "B" Annexed to Answer

(EMBLEM)

SWITCHMEN'S UNION
OF NORTH AMERICA—A.F.L.—C.I.O.

HEADQUARTERS
3 LINWOOD AVE. • BUFFALO, N. Y. 14202

February 15, 1967

ALL SWITCHMEN
ERIE-LACKAWANNA RAILROAD

Dear Sirs and Brothers:

HAVE YOU BEEN INFORMED ABOUT THE RECENT "BRT SLAVE LABOR AGREEMENT?"

This Agreement making Switchmen "SLAVES" to the BRT was recently negotiated by the Brotherhood of Railroad Trainmen on the Milwaukee Railroad and is to be effective March 1, 1967.

Attached hereto is the pertinent section of the Agreement which binds Milwaukee Switchmen to exclusive membership in the BRT and subjects a Switchman to discharge and loss of his job if he joins another Union.

Under this "Slave Labor Agreement" you lose all right to protest the amount of Union dues you can be forced to pay and the type of representation you are to receive.

Under this "Slave Labor Agreement" the BRT becomes a dictator over your wages and working conditions.

The Switchmen's Union is filing a law suit on the basis that the BRT "Slave Labor Agreement" (on the Milwaukee) violates Section 2, Eleventh of the Railway Labor Act which has for the past fifteen years legally permitted

Exhibit "B" Annexed to Answer

Operating Employees in the Railroad industry a choice of belonging to a Union, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees of the craft or class.

The Switchmen's Union will move initially for an order to restrain the application of this infamous Agreement on the Milwaukee until the Courts have had an opportunity to determine its legality.

We have lost two elections on this property by very small majorities. Our two year moratorium is almost finished. We will soon be in position to request another representation election.

Switchmen employed on the Erie-Lackawana by working to bring about an immediate representation election can escape the forced servitude of a BRT "Slave Labor Agreement".

It is no longer a choice of which Union—but a choice of Freedom or Dictatorship.

Fraternally yours,

/s/ JOHN P. O'CONNELL
JOHN P. O'CONNELL
Local Chairman
NA Local 298

"Exhibit B, which was annexed to the original Answer has not been reprinted. It consists of a reproduction of the opening paragraph and one section of a union shop agreement between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Brotherhood of Railroad Trainmen dated February 1, 1967."

Exhibit "C" Annexed to Answer

(EMBLEM)

SWITCHMEN'S UNION
OF NORTH AMERICA—A.F.L.—C.I.O.

HEADQUARTERS
3 LINWOOD AVE. • BUFFALO, N. Y. 14202

NEIL P. SPEIRS
International President

DANIEL W. COLLINS
International Secy-Treas.

February 13, 1967

MEMBERS—SWITCHMEN'S UNION
Employed by Milwaukee Railroad

Dears Sirs and Brothers:

A new "Slave Labor Agreement" was recently negotiated by the BRT on the Milwaukee Railroad and is to be effective March 1, 1967.

In general the provisions of the Agreement are intended to require that Switchmen (Yardmen) employed on the Milwaukee Railroad must become members of the BRT on the effective date of the Agreement, March 1, 1967.

The Switchmen's Union is filing a law suit on the basis that the Agreement violates Section 2, Eleventh of the Railway Labor Act which has for the past fifteen years legally permitted Operating Employees in the Railroad industry a choice of belonging to a Union, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees of the craft or class.

The Switchmen's Union will move initially for an order to restrain the application of the Agreement until the Courts have had an opportunity to determine the legality of the Agreement.

Exhibit "C" Annexed to Answer

We cannot advise you at this date whether the Court will issue a restraining order. However, we will advise you by letter prior to March 1, 1967 the effective date of the Agreement, if we have been successful in restraining the application of the Agreement and if not—what your personal course of action should be.

We have attached hereto a copy of the pertinent part of the BRT "Slave Labor Agreement" which applies to Milwaukee Switchmen (Yardmen).

In the forthcoming Representation Election among Switchmen on the Milwaukee Railroad, Switchmen will have the opportunity to determine whether they want *Freedom and Democracy* by supporting and voting for the Switchmen's Union or whether they wish to accept Dictatorship with no voice in the affairs of their Union.

Fraternally yours,

/s/ NEIL P. SPEIRS
NEIL P. SPEIRS
International President

NPS:bl
Enc.

"Exhibit C is also a reproduction of an abbreviated union shop agreement in effect on the Chicago, Milwaukee, St. Paul & Pacific Railroad."

(R. 69-73)

Verified Answer of Defendant, Erie Lackawanna Railroad Company

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, Erie Lackawanna Railroad Company, a corporation by its attorney, Raymond H. Branda, Esq., as and for an answer to the complaint herein alleges as follows:

1. Answering the introductory paragraph of the complaint, this defendant denies that this Court has jurisdiction over those parts of the complaint which advance a construction of the provisions of a collective bargaining agreement because Congress has granted exclusive jurisdiction over these matters to the National Railroad Adjustment Board, *Slocum* v. *Delaware, Lackawanna & Western Ry. Co.*, 339 U.S. 239, and to system, group or regional Boards of Adjustment as authorized by Public Law 89-456, §§1, 2, 80 Stat. 208, 209; June 20, 1966.

Further answering the introductory paragraph of the complaint, this defendant denies that this Court has jurisdiction to determine whether the terms of the collective bargaining agreement comply with the provisions of the Railway Labor Act, 45 U.S.C. §151 *et seq.*, until after the individually named employee-plaintiffs have exhausted the procedures of the contract.

Further answering the introductory paragraph of the complaint, this defendant denies that the collective bargaining agreement entered into on March 14, 1967, violates any provision of the Railway Labor Act, or any other Federal statute.

Verified Answer of Defendant, Erie Lackawanna Railroad Company

2. Admits paragraphs 1, 2, 3, 5 and 7 of the complaint.

3. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 4, 13 and 14 of the complaint.

4. Answering paragraph 6 of the complaint, this defendant alleges that the said paragraph does not pertain to it and therefore neither admits nor denies the allegations contained therein.

5. Denies that the Switchmen's Union of North America has ever been the duly designated and recognized representative of employees of the Erie Lackawanna Railroad Company, and allege that the Brotherhood of Railroad Trainmen, pursuant to an election conducted by the National Mediation Board in March of 1964, is the duly certified representative of all yard service employees of the Erie Lackawanna Railroad Company and has, since 1964, been the duly certified collective bargaining representative for all employees of the defendant railroad employed in the craft or class of yard foremen, helpers, switchtenders, including many employees who pay dues to the Switchmen's Union and who have not paid dues to the Brotherhood of Railroad Trainmen, and except for these allegations this defendant denies knowledge or information as to the allegations contained in paragraphs 8, 9 and 10 of the complaint herein.

6. Answering paragraph 11 of the complaint, this defendant admits that on March 14, 1967, the defendant Brotherhood of Railroad Trainmen and the defendant Erie Lackawanna Railroad Company entered into an agreement.

Further answering said paragraph 11 to the complaint, this defendant denies that said agreement by its terms is

in violation of Section 2, Third, Fourth, Fifth and Eleventh of the Railway Labor Act, as amended (45 U.S.C. 152 Third Fourth, Fifth and Eleventh) in that said agreement requires all employees covered thereby as a condition of employment to become and remain members of the defendant Brotherhood of Railroad Trainmen within sixty days after the effective date of the agreement, without providing that as to all employees covered by said agreement membership in any other labor organization national in scope which admits to membership employees within the craft or class, yard service shall satisfy the requirement of membership as required by said agreements is made mandatory by Section 2, Eleventh (c) of the Railway Labor Act, as amended.

7. This defendant denies each and every allegation set forth in paragraphs 15, 16, 17, 18, 19, 20, 21, and 22 of the complaint.

As and for a First Affirmative Defense

8. This defendant alleges that the complaint herein fails to state a claim upon which relief can be granted.

As and for a Second Affirmative Defense

9. This defendant alleges that the matters complained of involve the interpretation or application of a collective bargaining contract which provides for arbitration of disputes arising thereunder in accordance with the terms thereof, and these arbitration procedures constitute the sole and exclusive remedy for the individual plaintiffs.

As and for a Third Affirmative Defense

10. This defendant alleges that the plaintiffs have failed to exercise administrative remedies available to them under

various provisions which are upon information and belief contained in the constitution of Brotherhood of Railroad Trainmen and that this Court, therefore, has no jurisdiction over the subject matter herein.

WHEREFORE the defendant Erie Lackawanna Railroad Company demands judgment denying all requested injunctive relief and dismissing the complaint together with costs and attorneys fees.

Dated: April 18, 1967

RAYMOND H. BRANDA
Attorney for Defendant
Erie Lackawanna Railroad Company
140 Cedar Street
New York, New York 10006
BArclay 7-2500

To:

ARNOLD B. ELKIND
Attorney for Defendants
Brotherhood of Railroad Trainmen
and W. J. Weil
122 East 42nd Street
New York, New York 10017

LEE LEIBIK, ESQ.
c/o STURM & PERL, ESQS.
Attorneys for Plaintiffs
150 Broadway
New York, New York

(Duly Verified April 18, 1967.)

(R. 372-415)

Requests for Admission Under Rule 36
Dated May 23, 1967

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

Defendant, BROTHERHOOD OF RAILROAD TRAINMEN, requests the plaintiffs, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents exhibited with this request is genuine:

(A) Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Lines East) and the Brotherhood of Railroad Trainmen dated February 1, 1967.

(B) Agreement between Central Railroad Company of New Jersey, New York and Long Branch Railroad Company and Brotherhood of Railroad Trainmen dated March 15, 1967.

(C) Agreement between Reading Company and Brotherhood of Railroad Trainmen dated March 15, 1967.

(D) Agreement between Cambria and Indiana Railroad Company, Conemaugh & Black Lick Rail-

road Company, Patapsco & Back Rivers Railroad Company, Philadelphia, Bethlehem and New England Railroad Company, South Buffalo Railway Company, and Steelton & Highspire Railroad Company and United Steelworkers of America, dated August 14, 1962.

(E) Agreement between Port Authority Trans-Hudson Corporation and Brotherhood of Locomotive Engineers, dated September 21, 1966.

(F) Agreement between Richmond, Fredericksburg and Potomac Railroad Company and Brotherhood of Locomotive Engineers, dated December 20, 1966.

(G) Agreement between Boston and Maine Corporation and Brotherhood of Railroad Trainmen, dated July 13, 1966.

(H) Certification of the National Mediation Board, dated June 23, 1954, designating the United Steelworkers of America, CIO, to represent the craft or class of Locomotive Engineers on the Conemaugh & Black Lick Railroad Company.

(I) Certification of National Mediation Board, dated October 1, 1947, designating the United Steelworkers of America, CIO, to represent the craft or class of Locomotive Engineers on the Conemaugh & Black Lick Railroad Company.

(J) Certification of the National Mediation Board, dated April 23, 1937, designating the Brotherhood of Railroad Trainmen to represent con-

ductors, brakemen, yard foremen, yard helpers and switchtenders, and the Brotherhood of Locomotive Firemen and Enginemen to represent locomotive engineers, firemen, hostlers and engine inspectors, on the Conemaugh & Black Lick Railroad.

(K) Certification of the National Mediation Board, dated May 16, 1944, certifying a continuation of representation by the Brotherhood of Locomotive Firemen and Enginemen for the craft of Locomotive Engineers and certifying United Steelworkers as the representative for the crafts of Locomotive Firemen, Hostlers and Hostler Helpers and Yardmen (Foremen, Helpers and Switchtenders), on the Conemaugh & Black Lick Railroad.

2. That each of the following statements is true:

(A) That the Brotherhood of Railroad Trainmen, at the time of the commencement of this action and for a number of years prior thereto, was the exclusive bargaining agent, duly certified as such by the National Mediation Board, for the employees in the crafts or class of conductors, ticket collectors, baggagemen, trainmen, and yard service employees working in both road and yard service for the Erie Lackawanna Railroad Company.

(B) That the Brotherhood of Railroad Trainmen and the Erie Lackawanna Railroad Company are currently parties to written collective bargain-

ing agreements containing provisions for rates of pay, hours of work, health and welfare benefits, seniority rights, union security, and numerous other terms and conditions of employment for the employees working in yard and road service.

(C) That all employees on the Erie Lackawanna Railroad within the crafts or classes represented by the Brotherhood of Railroad Trainmen receive the benefits of said collective bargaining agreements, including the individual plaintiffs, the individual intervening plaintiffs, and those employees paying dues to the Switchmen's Union of North America and/or the Order of Railway Conductors and Brakemen.

(D) That the Switchmen's Union of North America is not now, and has not been for several years, certified by the National Mediation Board as the bargaining representative of any employees of any class or craft on the Erie Lackawanna Railroad.

(E) That the Order of Railway Conductors and Brakemen is not now, and has not been for several years, certified by the National Mediation Board as the bargaining representative of any employees of any class or craft on the Erie Lackawanna Railroad.

(F) That at no time material to this proceeding, nor at the time of the commencement of this action, has either the Switchmen's Union of North

Requests for Admission Under Rule 36
Dated May 23, 1967

America or the Order of Railway Conductors and Brakemen been recognized by the Erie Lackawanna Railroad Company as the exclusive bargaining agent for any employees of any class or craft performing services on the Erie Lackawanna Railroad.

(G) That neither at the time of the commencement of this proceeding nor at any time material, have either the Switchmen's Union of North America or the Order of Railway Conductors and Brakemen been a party to any collective bargaining agreement with the Erie Lackawanna Railroad Company.

(H) That the Brotherhood of Railroad Trainmen, as the exclusive bargaining agent of all the employees in the class or crafts which it represents with the Erie Lackawanna Railroad Company, is under an enforceable obligation to represent all employees covered by the agreement, whether or not they are members of the Brotherhood of Railroad Trainmen.

(I) That there have been no discharges by the Erie Lackawanna Railroad pursuant to the union shop agreements of March 14, 1967 (Eastern District) and April 4, 1967 (Western District).

(J) That there has been no threat made to discharge any employee purported to be covered by the union shop agreements dated March 14, 1967 and April 4, 1967, by the Erie Lackawanna Railroad Company.

Requests for Admission Under Rule 36
Dated May 23, 1967

(K) That no individual has invoked any of the procedures contained in the union shop agreements annexed to the complaint.

(L) That members of the Switchmen's Union of North America and members of the Order of Railway Conductors and Brakemen do not contribute in any way to meeting the expense of maintaining the General Grievance Committee of the Brotherhood of Railroad Trainmen on the Erie Lackawanna Railroad.

(M) That none of the plaintiffs, or other members of the class or crafts they assert to represent in this proceeding, hold employment rights with the Erie Lackawanna Railroad in any craft or class other than those classifications which are exclusively represented on the Erie Lackawanna Railroad by the Brotherhood of Railroad Trainmen.

(N) That the books and records of the Brotherhood of Railroad Trainmen contain entries which are made and entered at or about the time of the transactions which they reflect.

(O) That an examination of the books and records of the Brotherhood of Railroad Trainmen would show the following to be disbursements of the Erie Lackawanna (East) General Grievance Committee Advance Fund for the months of January 1965 to March 1967 inclusive:

Requests for Admission Under Rule 36
Dated May 23, 1967

	Year 1965	*Year 1966*	*Year 1967*	
January	$ 2,732,08	$ 2,400.68	$ 4,742.88	
February	2,275.03	3,434.83	2,238.15	
March	2,901.12	3,796.90	3,288.05	
April	2,894.55	7,599.89		
May	2,930.87	3,393.46		
June	2,714.53	4,528.49		
July	2,977.80	3,432.82		
August	2,429.87	3,312.10		
September	3,638.07	4,628.27		
October	4,248.55	3,327.99		
November	4,539.09	3,004.45		
December	3,846.02	4,097.47		
	$38,127.58	$46,957.35	$10,269.08	Total (East) $95,354.01

(P) That an examination of the books and records of the Brotherhood of Railroad Trainmen would show the following to be the disbursements of the Erie Lackawanna (West) General Grievance Committee Advance Fund for the months of January 1965 to March 1967 inclusive:

	Year 1965	*Year 1966*	*Year 1967*	
January	$ 4,040.37	$ 2,755.27	$ 3,178.49	
February	5,004.65	3,487.87	3,763.29	
March	9,687.02	6,804.86	13,687.98	
April	15,181.84	3,870.24		
May	4,136.13	3,670.20		
June	6,680.73	4,781.85		
July	4,905.59	2,629.57		
August	4,466.44	7,017.39		
September	6,326.03	6,486.70		
October	4,287.79	5,157.85		
November	3,694.40	5,053.96		
December	7,144.84	6,865.21		
	$75,555.83	$58,580.97	$20,629.76	Total (West) $154,766.56
			Grand Total	$250,120.57

Requests for Admission Under Rule 36
Dated May 23, 1967

Dated: New York, N.Y.
May 23, 1967.

Yours, etc.

ARNOLD B. ELKIND
Attorney for Defendants,
Brotherhood of Railroad
Trainmen and W. J. Weil
122 East 42nd Street
New York, N.Y. 10017

To:

ALAN F. PERL, ESQ.
Sturm and Perl
150 Broadway
New York, N.Y.

LEE LEIBIK
RUTH WEYAND
343 South Dearborn Street
Chicago, Illinois 60604
Attorneys for Plaintiffs
and Intervenor-Plaintiffs

Exhibits Annexed to Requests for Admission

AGREEMENT

Between The

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY (Lines East)

And The

BROTHERHOOD OF RAILROAD TRAINMEN

This agreement, made this 1st day of February, 1967 by and between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the "Company" (Lines East), and the Brotherhood of Railroad Trainmen, hereinafter referred to as the "Brotherhood", witnesseth:

IT IS AGREED:

Section 1.

(a) In accordance with and subject to the terms and conditions hereinafter set forth, all employes of the company now or hereafter subject to the rules and working conditions agreement between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreement, become members of the Brotherhood within sixty calendar days of the date they first perform compensated service as such employes after the effective date of this agreement, and thereafter shall maintain membership in the Brotherhood; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months.

(b) It is agreed, as a condition of continued employment, all employes of the company shall hold or acquire member-

ship in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East) covering employes of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employe from changing membership from one organization to another organization having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East), covering employes of a craft or class in train or yard service; provided further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood.

Section 2.

(a) Every employe covered by the provisions of this agreement shall be considered by the Company to have met the requirements of this agreement, or as having been denied membership in the Brotherhood, unless the Company is advised to the contrary in writing by the Brotherhood.

(b) Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreement.

Section 3.

Employes promoted to official or other positions who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this agreement; provided, that if such employes shall have terminated membership during their occupancy of official or other positions, they shall, within sixty (60) calendar days following date

of their return to service represented by this Brotherhood, come under the provisions of Section 1 of this agreement.

Section 4.

Employes furloughed through reduction of force, or absent due to sickness or disability, or leave of absence, who retain and/or accumulate seniority under the provisions of the schedule agreement, wlil not have such seniority terminated by reason of any of the provisions of this agreement, but shall, within sixty (60) calendar days following date of their resumption of employment, come under Section 1 of this agreement.

Section 5.

The seniority status and rights of employes furloughed to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this agreement, but shall, within sixty (60) calendar days following resumption of employment, come under Section 1 of this agreement.

Section 6.

An employe, retired on disability annuity under the Railroad Retirement Act at an age earlier than 65 and who retains seniority until he reaches age 65, shall not have his seniority status and rights terminated by reason of noncompliance with the provisions of this agreement. If the employe returns to active service, he shall, within sixty (60) calendar days following date of his return, come under Section 1 of this agreement.

Section 7.

Notice of non-compliance with the provisions of Section 1 of this agreement by an individual employe shall be given

by Certified Mail by the General Chairman (or designated representative) of the Brotherhood to the Vice President-Labor Relations of the Company not earlier than the expiration of the sixty (60) calendar day period from the date of employment in a craft or class of service covered by this agreement or resumption of employment as contemplated by Sections 3, 4, 5 and 6.

Section 8.

(a) Termination of an employe's seniority rights and employment relationship with the Company due to alleged non-compliance with the provisions of Section 1 of this agreement shall not be made without notice. The Brotherhood will notify the highest officer of the Company designated to handle notices under this agreement, by Certified Mail, of any employe who it is alleged has failed to comply with the provisions of Section 1 of this agreement. Upon receipt of such notice, the Company will, within ten calendar days of such receipt, so notify the employe concerned in writing by Certified Mail, or personal delivery, delivery to be evidenced by a receipt. An employe so notified who disputes the fact that he has failed to comply with the terms of this agreement shall, within a period of ten calendar days from the date of receipt of such notice, request the Company in writing by Certified Mail, or personal delivery, delivery to be evidenced by a receipt, to accord him a hearing. Upon receipt of such request the Company shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing with copy to the Brotherhood by Certified Mail, or personal delivery, delivery to be evidenced by a receipt. The receipt by the Company of a request for a hearing shall

operate to stay action on the termination of employment until the hearing is held and the decision of the Company is rendered.

The Company shall determine on the basis of the evidence produced at the hearing whether or not the employe has complied with the provisions of Section 1 of this agreement and shall render a decision within ten calendar days from the date that the hearing is closed, and the employe and the Brotherhood shall be promptly advised thereof in writing, by Certified Mail, or personal delivery, delivery to be evidenced by a receipt.

In the event the employe concerned does not request a hearing as provided herein, the Company shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the Brotherhood, unless the Company and the Brotherhood agree otherwise in writing.

(b) Discipline rules contained in existing agreements between the Company and the Brotherhood will not apply to cases arising under this agreement.

Section 9.

(a) An employe whose service is terminated for noncompliance with the provisions of this agreement, shall be regarded as having terminated his employment relationship, except such termination will not be required to be effected until such time as a qualified replacement is available; however, his position on the roster will be changed to show him as being the youngest employe on the roster.

(b) An employe whose services are terminated in accordance with the provisions of Section 8 hereof shall not there-

after be restored to the carrier's service in any craft or class represented by the Brotherhood except as a new employe or as provided in Section 11 of this agreement.

Section 10.

Nothing in this agreement shall require an employe to become or to remain a member of the Brotherhood if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other member, if the membership of such employe is denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employes in the same status at the same time.

Section 11.

(a) If an employe's seniority and employment under the Rules and Working Conditions Agreement is terminated by the Company under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Brotherhood shall indemnify and save harmless the Company against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the Company involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Company acts in collusion with any em-

ployе; provided further, that the aforementioned liability shall not extend to the expense to the Company in defending suits by employes whose seniority and employment are terminated by the Company under the provisions of this agreement.

(b) An employe whose seniority and employment is terminated because of alleged non-compliance with the provisions of this agreement and such termination of seniority and employment is subsequently determined to be improper, unlawful or unenforceable, the employe shall be returned to service with seniority rights unimpaired.

Section 12.

(a) In the event the decision reached by the Company on the basis of the hearing held in accordance with the provisions of Section 8 hereof is not satisfactory to the employe or to the Brotherhood it may be appealed in writing by Certified Mail, Return Receipt Requested, directly to the highest officer of the Company designated to handle appeals under this agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Company shall promptly notify the other party in writing of any such appeal by Certified Mail, Return Receipt Requested. The decision on such appeal shall be rendered within ten calendar days of the date the notice is received, and the employe and the Brotherhood shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested.

(b) If the decision on such appeal is that the employe has not complied with the terms of this agreement, his seniority

and employment under the rules and working conditions agreement shall be terminated within ten calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the Company and the Brotherhood agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Brotherhood or the employe involved requests the selection of a neutral person to decide the dispute as provided in Section 12 (c) below. Any request for the selection of a neutral person, as provided in Section 12 (c) below, shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person, except, however, in a case where the selection of a neutral is requested by the employe, beginning within ten calendar days of the date of the carrier's decision on appeal, and continuing until decision is rendered by the neutral person, his position on the roster will be changed to show him as being the youngest employe on the roster.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the Company designated to handle appeals under this agreement the Brotherhood or the employe involved requests such highest officer in writing by Certified Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Company designated to handle appeals under this agreement or his designated representative, the Chief Executive of the Brotherhood or his designated representative, and the employe involved or his representative. If they are unable to agree upon the

selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Company, the Brotherhood and the employe involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Company, the employe and the Brotherhood shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested. If the position of the employe is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Company and the Brotherhood; if the employe's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the Company, the Brotherhood and the employe.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the Company and the Brotherhood.

(e) In computing the time periods specified in this agreement, the date on which the notice is received or decision rendered shall not be counted.

Section 13.

No part of this agreement shall be used in any manner whatsoever as a basis for a grievance or time claim by or on behalf of any employe; and no part of the schedule agreement covering rates of pay and working conditions shall be used as a basis for a grievance or time claim by or on behalf of any employe predicated upon an alleged violation, misapplication or non-compliance with any part of this agreement.

Exhibits Annexed to Requests for Admission

Section 14.

This agreement is in full and final settlement of the Section 6 notices dated November 16, 1966 and December 14, 1966, served on this carrier by the BRT, and carrier's counterproposals dated November 25, 1966. This agreement, which supersedes the Union Shop Agreement dated June 9, 1953, shall become effective March 1, 1967, and will remain in effect until revised or cancelled in accordance with the provisions of the Railway Labor Act, as amended.

FOR THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY (Lines East):

(Signed) S. W. AMOUR
Vice President-Labor Relations

FOR THE EMPLOYEES

(Signed) E. L. Dirks
General Chairman
Brotherhood of Railroad Trainmen

Exhibits Annexed to Requests for Admission

AGREEMENT

Between The

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY (Lines East)

And The

BROTHERHOOD OF RAILROAD TRAINMEN

It is agreed that in the application of the Union Shop Agreement signed this date in Chicago, Illinois, that any employe in service on the date of this agreement who is not a member of a union as provided in Section 1 of the Union Shop Agreement and who will make affidavit he was a member of a bona fide and recognized religious group, on the date of this agreement, having scruples against joining a union, will, if he would otherwise be required to join a union under the Union Shop Agreement, be deemed to have met the requirements of the Union Shop Agreement if he agrees to and does pay initiation fees, periodic dues and assessments to one of the unions as specified in Section 1 of the Union Shop Agreement.

Signed at Chicago, Illinois, this 1st day of February, 1967.

FOR THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY (Lines East):

(Signed) S. W. AMOUR
Vice President-Labor Relations

FOR THE EMPLOYES:

(Signed) E. L. DIRKS
General Chairman—BRT

Exhibits Annexed to Requests for Admission

AGREEMENT

Between

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
NEW YORK AND LONG BRANCH RAILROAD COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

Effective March 15, 1967 it is agreed:

1. Subject to the terms and conditions hereinafter set forth, all employes of the Carriers in the general classes of Conductors, Trainmen and Yardmen, (including Switchtenders and Car Retarder Operators) who are represented by the Brotherhood and embraced by the respective agreements between the parties hereto, shall, as a condition of their continued employment in such work, be members of the Brotherhood.

2. Employes shall acquire membership in the Brotherhood within sixty calendar days of the date on which they first perform compensated service in the classes described in Section 1 hereof under the provisions of the respective agreements, or within sixty calendar days of the effective date of this agreement, whichever is later, and shall retain such membership during the time they are employed in such classes or during the time this agreement remains in effect, except as otherwise provided herein.

3. It is agreed as a condition of continued employment, all employes of the Company shall hold or acquire membership in any one of the labor organizations national in scope, organized in accordance with the Railway Labor Act, having a Labor contract with The Central Railroad Company

of New Jersey covering employes of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employes from changing membership from one organization to another organization having a labor contract with The Central Railroad Company of New Jersey covering employes of a craft or class in train or yard service.

4. (a) Employes who retain seniority in these classes and who are regularly assigned or transferred to full time employment not covered by such agreements or who, for a period of thirty days or more, are (1) furloughed on account of force reduction, or (2) on leave or absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this agreement as long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. Should such employes return to any service and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements be required to become and remain members of the organization representing their class within thirty-five calendar days from date of their return to such service.

(b) The seniority status and rights of employes furloughed to serve in the Armed forces or granted leaves of absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this agreement but such employes shall, upon resumption of employ-

ment be considered as new employes for the purposes of applying this agreement.

(c) Employes who retain seniority in these classes and who, for reasons other than those specified in subsections (a) and (b) of this section, are not in service covered by such agreements, or leave such service, will not be required to maintain membership as provided in Section 1 of this agreement so long as they are not in service covered by such agreements, but they may do so at their option. Should such employes return to any service covered by the said agreements they shall, as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the Brotherhood.

5. Nothing in this agreement shall require an employee to become or remain a member of the Brotherhood if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. The dues, initiation fees, and assessments referred to herein mean indebtedness accruing for these items following the effective date of this agreement.

6. The Brotherhood will keep account of employes in classes described in Section 1, and will independently ascertain the status of such employes under the membership

requirements of this agreement. The Carrier shall furnish to the General Chairmen of the Brotherhood monthly, the names and addresses of all employes who commenced work in the classes described in Section 1 hereof, during the previous month after the effective date of this agreement.

7. (a) The Brotherhood will notify the employing Carrier in writing the identity of any employees who employment under the respective agreements between the parties hereto it requests be terminated by reason of failure to comply with the terms of this agreement. Upon receipt of such notice and request, the Carrier will, as promptly as possible but within ten calendar days of such receipt, notify the employee concerned in writing by registered mail to his last known address, or receipted personal delivery, that he is charged with failure to comply with the terms of this agreement. Copy of such notice shall be given to the Brotherhood. Any employee so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall, within a period of ten calendar days from the date of such notice, request the Carrier in writing to accord him a hearing. Such request shall be honored by the Carrier and date set for hearing as soon as possible, but within ten calendar days of the date of receipt of request therefor. Copy of notice of such hearing shall be given to the Brotherhood. The receipt by the Carrier of a request for a hearing shall operate to stay action on the request of the Brotherhood for termination of employment until the hearing is held and the final decision on the property is rendered. In the event the employee concerned the Carrier and the Brotherhood agree otherwise in writing fails to request a hearing as provided for herein, unless

and except as herein after provided, the Carrier shall proceed to terminate his employment under the applicable agreements between the parties hereto at the end of a period of thirty calendar days from receipt of the request from the Brotherhood.

(b) That in the event the application of this agreement would require the discharge of an employee or of a group of employes which, because of a manpower shortage or because of particular requirement on that job or jobs might make it difficult to fill such position or positions, the Carrier involved shall have a reasonable time within which to prepare for such replacement during which time the employee or employes subject to discharge may continue on in the positions they then occupy but they will not have any right to displace other employes or to bid on any vacancies.

(c) The Carrier shall determine on the basis of evidence produced at the hearing whether or not the employee has complied with the terms of this agreement, and shall render a decision accordingly. Such decision shall be rendered within twenty calendar days of the hearing date and the employee and the Brotherhood shall be promptly advised thereof. If the decision is that the employee has not complied with the terms of this agreement, unless the Carrier and the Brotherhood agree otherwise in writing, his employment in classes described in Section 1 hereof shall, except as provided in paragraph (b) hereof, be terminated within twenty calendar days of the date of said decision. The decision shall be final and binding unless within thirty calendar days thereafter the Carrier is notified in writing that the decision is unsatisfactory and in such event the dispute may be submitted to a tribunal having jurisdiction

thereof within six months of the date of such decision. The accredited representative of the Brotherhood shall have the right to be present at and participate in any hearing conducted pursuant to this agreement.

(d) Discipline rules contained in existing agreements between the Carriers and the Brotherhood will not apply to cases arising under this agreement.

(e) An employee whose employment is terminated as a result of noncompliance with the provisions of this agreement shall be regarded as having terminated his employee relationship for vacation purposes.

8. Neither this agreement, nor any provision contained herein, shall be used as a basis for time or money claims against the Carriers.

9. That the organization will indemnify the Carriers party to this agreement from and against any and all claims or grievances which may arise out of any discharge under this agreement, which may be held to have been illegal or unjust by any competent court or other authority having jurisdiction of such claims.

10. The agreement effective December 1, 1953 is accordingly abrogated.

11. This agreement shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Exhibits Annexed to Requests for Admission

Signed at Jersey City, New Jersey, this 9th day of March 1967.

For:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY NEW YORK AND LONG BRANCH RAILROAD COMPANY

/s/ J. A. CADDECKE
Vice President

For:

BROTHERHOOD OF RAILROAD TRAINMEN

/s/ E. D. McLAUGHLIN
General Chairman

/s/ STEPHEN F. McDONALD
Secretary

APPROVED:

/s/ W. J. WEIL
Vice President

Exhibits Annexed to Requests for Admission

MEMORANDUM OF AGREEMENT

Between

READING COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

This Agreement made this 15th day of March, 1967, by and between the Reading Company, hereinafter referred to as the Company, and the employes of said Company represented by the Brotherhood of Railroad Trainmen, hereinafter referred to as the Brotherhood.

IT IS AGREED:

Section 1

As a condition of continued employment, and subject to the conditions hereinafter provided, all employees now or hereafter employed in any work covered by the rules and working conditions agreement between the parties hereto, who have established a seniority date under that agreement, shall, within sixty days following the beginning of such employment or the effective date of this agreement, whichever is later, become members of the organization party to this agreement representing their craft or class: Provided, that such condition shall not apply with respect to any employe to whom such membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to any employe to whom such membership was denied or terminated for any reason other than the failure of the employe to tender the uniform periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

Exhibits Annexed to Requests for Admission

Section 2

It is agreed as a condition of continued employment, all employes of the Company shall hold or acquire membership in any one of the labor organizations national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the Reading Company covering employes of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employe from changing membership from one organization to another organization having a labor contract with the Reading Company covering employes of a craft or class in train or yard service.

Section 3

(a) Each employe covered by the provisions of this agreement shall be considered by the Company to have met the requirements of the agreement unless and until the Company is advised to the contrary in writing by the Brotherhood. The Brotherhood will notify the Company in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employe who it is alleged has failed to comply with the terms of this agreement and who the Brotherhood therefore claims is not entitled to continue in employment subject to the rules and working conditions agreement. The form of notice shall specify the reasons for allegation of noncompliance and be similar to that which is attached to and made a part of this agreement. Upon receipt of such notice, the Company will, within ten calendar days of such receipt, so notify the employe concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employe shall be given the Brotherhood. An employe so notified who disputes the

fact that he has failed to comply with the terms of this agreement, shall within a period of ten calendar days from the date of receipt of such notice, request the Company in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the Company shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing with copy to the Brotherhood, by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the Brotherhood shall attend and participate in the hearing. The receipt by the Carrier of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Company is rendered.

In the event the employe concerned does not request a hearing as provided herein, the Company shall proceed to terminate his seniority and employment under the rules and working conditions agreement not later than thirty calendar days from receipt of the above described notice from the organization, unless the Company and the Brotherhood agree otherwise in writing.

(b) The Company shall determine on the basis of the evidence produced at the hearing whether or not the employe has complied with the terms of this agreement and shall render a decision within twenty calendar days from the date that the hearing is closed, and the employe and the Brotherhood shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

Exhibits Annexed to Requests for Admission

If the decision is that the employe has not complied with the terms of this agreement, his seniority and employment under the rules and working conditions agreement shall be terminated within twenty calendar days of the date of said decision except as hereinafter provided or unless the Company and the Brotherhood agree otherwise in writing.

If the decision is not satisfactory to the employe or to the Brotherhood it may be appealed in writing by Registered Mail, Return Receipt Requested, directly to the highest officer of the Company designated to handle appeals under this agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Company shall promptly notify the other party in writing of any such appeal, by Registered Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty calendar days of the date the notice of appeal is received, and the employe and the Brotherhood shall be promptly advised thereof in writing, by Registered Mail, Return Receipt Requested.

If the decision on such appeal is that the employe has not complied with the terms of this agreement, his seniority and employment under the rules and working conditions agreement shall be terminated within twenty calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the Company and the Brotherhood agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Brotherhood or the employe involved requests the selection of a neutral

person to decide the dispute as provided in Section 3 (c) below. Any request for selection of a neutral person as provided in Section 3 (c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the Company designated to handle appeals under this agreement the Brotherhood or the employe involved requests such highest officer in writing by Registered Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Company designated to handle appeals under this agreement or his designated representative, The Chief Executive of the Brotherhood or his designated representative, and the employe involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Company, the Brotherhood and the employe involved shall have the right to appear and present evidence at the hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Company, the employe and the Brotherhood shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested. If the position of the employe is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Company and the Brotherhood; if the employe's position is not sustained, such fees, salary and ex-

penses shall be borne in equal shares by the Company, the Brotherhood and the employe.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the Company and the Brotherhood.

(e) Provisions of investigation and discipline rules contained in the rules and working conditions agreement between the Company and the Brotherhood will not apply to cases arising under this agreement.

(f) The General Chairman of the Brotherhood shall notify the Company in writing of the title(s) and address(es) of its representatives who are authorized to serve and receive the notices described in this agreement. The Company shall notify the General Chairman of the Brotherhood in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this agreement.

(g) In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

Section 4

The provisions of Section 1 of this agreement are not applicable to:

(a) An employee who now occupies or who hereafter is promoted to an official position with the Company for a period of more than thirty calendar days and whose seniority is preserved under the provisions of the rules agreement with the Brotherhood, or

(b) An employe who is off duty account of sickness, disability, furlough or leave of absence for military service

(including leave of absence for educational purposes provided in G.I. Bill of Rights), for a period in excess of thirty calendar days, or

(c) An employe who retires on disability annuity under the Railroad Retirement Act at an age earlier than 65 years and who retains seniority until he reaches the age of 65 years.

Section 5

No part of this agreement shall be used in any manner whatsoever as a basis for a grievance or time claim by or on behalf of any employe; and no part of the schedule agreement covering rates of pay and working conditions shall be used as a basis for a grievance or time claim by or on behalf of any employe predicated upon an alleged violation, misapplication or non-compliance with any part of this agreement relating to Union Shop.

Section 6

In the event that seniority and employment under the rules and working conditions agreement is terminated by the Company under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Brotherhood shall indemnify and save harmless the Company against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; Provided, however, that this section shall not apply to any case in which the Company involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Company acts in collusion with any em-

ployе; Provided, further, that the aforementioned liability shall not extend to the expense to the Company in defending suits by employes whose seniority and employment are terminated by the Company under the provisions of this agreement.

Section 7

This Agreement abrogates the Agreement of May 16, 1953.

This Agreement shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Philadelphia, Pa., March 15, 1967.

For Brotherhood of Railroad Trainmen

/s/ Leo J. Ward
General Chairman

/s/ M. K. (Illegible)
Vice Chairman

/s/ J. F. (Illegible)
Secretary

Approved:

/s/ W. J. Weil
Vice President

For Reading Company

/s/ V. W. (Illegible)
Manager Labor Relations

Exhibits Annexed to Requests for Admission

AGREEMENT dated August 14, 1962, between CAMBRIA AND INDIANA RAILROAD COMPANY, CONEMAUGH & BLACK LICK RAILROAD COMPANY, PATAPSCO & BACK RIVERS RAILROAD COMPANY, PHILADELPHIA, BETHLEHEM AND NEW ENGLAND RAILROAD COMPANY, SOUTH BUFFALO RAILWAY COMPANY, and STEELTON & HIGHSPIRE RAILROAD COMPANY and UNITED STEELWORKERS OF AMERICA.

RULE 3—RECOGNITION AND UNION MEMBERSHIP

(a) Subject to the provisions of the Railway Labor Act, the Company recognizes the Union as the exclusive representative of all the Employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) Subject to the provisions of the Railway Labor Act, all the Employees shall, as a condition of continued employment, become members of the Union within 60 calendar days after the date on which they first perform compensated service in employment covered by these Rules, and shall thereafter maintain membership in the Union in good standing during the time they remain in such employment, except that such membership shall not be required of any Employee until after he has completed 30 days of such compensated service within a period of 12 consecutive calendar months.

(c) Subject to the provisions of the Railway Labor Act, upon receipt by the company of a voluntary written assignment by an Employee (in a form agreed to by the Company and the Union), the Company shall deduct from the pay of such Employee each month thereafter during the existence of such assignment his periodic Union dues for the preced-

ing month, and the Company shall also deduct any assessments against him which shall be general and uniform among the Employees and, if owing by him, an initiation fee uniformly required as a condition of acquiring membership in the Union, all as payable to the Union in accordance with its constitution and by-laws. The International Secretary-Treasurer of the Union shall notify the Company in writing of the respective amounts of dues, initiation fees and assessments which shall be so deducted.

(d) The Union shall indemnify the Company and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the Company for the purpose of complying with the provisions of this Rule 3.

Exhibits Annexed to Requests for Admission

September 21, 1966.

Mr. Stanley Laboski
General Chairman
Brotherhood of Locomotive Engineers
211 14th Street
West Babylon, New York

Dear Mr. Laboski:

Reference is made to Article XVI ("Union Shop") of the basic agreement between us dated May 27, 1964.

It is proposed that this Article be amended by striking out Paragraph A-3 thereof in its entirety.

If you are in accord with the foregoing, would you please indicate your agreement by signing in the space designated below.

Very truly yours,

/s/ Louis J. Gambaccini
LOUIS J. GAMBACCINI
Vice President and General Manager

A.....
FOR
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

/s/ S. W. Laboski
General Chairman

/s/ .....
APPROVED:
Assistant Crane Chief Engineer

Exhibits Annexed to Requests for Admission

PORT AUTHORITY
TRANS-HUDSON
CORPORATION

AGREEMENT

with

Brotherhood of Locomotive Engineers
Effective

MAY 27, 1964

filling any such vacancy shall be paid at the Motormen's rate of pay for the entire day, unless providing only toilet relief. Upon being released from such an assignment, a Motor-Switchman shall return to complete his regular tour of duty.

5. Employees affected hereunder are required to consult the daily assignment sheet.

6. Presently A.M. runs and tours of duty commence between 4:30 A.M. ~~and noon,~~ P.M. runs and tours of duty commence between 12:01 P.M. and 9:59 P.M. and Midnight runs and tours of duty commence between 10:00 P.M. and 4:29 A.M. Prior assignments hereunder shall be filled only by employees whose regular assignments are on the same shift as the vacant job, i.e., A.M. for A.M., P.M. for P.M., and Midnight for Midnight. This provision shall not apply to employees on the preferred extra list or extra list, as such employees do not have regular assignments.

Exhibits Annexed to Requests for Admission

Article XVI

UNION SHOP

A. 1. Subject to the terms and conditions hereinafter set forth, all employees in classes of employment covered by this Agreement shall, as a condition of their continued employment, be members of the Brotherhood.

2. Employees shall acquire membership in the Brotherhood within sixty (60) calendar days of the date on which they first perform compensated service under the provisions of this Agreement, or within sixty (60) calendar days of the effective date of this Article, whichever is later, and shall retain such membership during the time they are so employed during the time this Article remains in effect, except as otherwise provided herein.

3. The requirements of the membership specified in this Article shall be satisfied if employees in classes described in Section 1 hereof shall hold or acquire membership in any one of the labor organizations other than the Brotherhood, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees in classes of employment covered by this Agreement, provided, however, that any employee in such service on the effective date of this Article who is not a member of any such organization may, as a condition of continuing such employment, be required to become a member of the Brotherhood party to this Agreement: provided, further, that nothing herein shall prevent an employee from changing membership from one organization to another organization admitting to membership such employees in classes of employment covered by this Agreement.

Exhibits Annexed to Requests for Admission

4. (a) When employees are regularly assigned to official or subordinate official positions or are regularly transferred to classes of employment not covered by this Agreement they will not be compelled to maintain membership as provided in this Article but may do so at their own option.

(b) Employees furloughed through reduction in force, or employees off due to sickness or leave of absence, etc., for more than thirty (30) continuous days, who retain and/or accumulate seniority, under the provisions of this Agreement, will not have such seniority terminated by reason of any of the provisions of this Article, but shall upon resumption of employment, come under Section 2 of this Article.

5. Nothing in this Article shall require an employee to become or remain a member of the Brotherhood if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. The dues, initiation fees, and assessments referred to heren mean indebtedness accruing for these items following the effective date of this Article.

6. The Brotherhood will keep account of employees in classes of employment covered by this Agreement and will independently ascertain the status of such employees under the membership requirements of this Article. PATH shall furnish to the accredited representative of the Brotherhood within ten (10) calendar days from date of employment the

names and addresses of all employees entering the service in classes of employment covered by this Agreement.

THIS AGREEMENT MADE THIS 20TH DAY OF DECEMBER, 1966, BY AND BETWEEN THE RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY AND THE EMPLOYES THEREOF REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

IT IS AGREED:

SECTION 1 — In accordance with and subject to the terms and conditions hereinafter set forth, all employes of the Carrier now or hereafter subject to the rules and Working Conditions Agreement between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the Organization party to this agreement within sixty calendar days of the date they first perform compensated service as such employes after the effective date of this agreement and thereafter shall maintain membership in such Organization, except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future Rules and Working Conditions Agreements.

SECTION 2 — (a) The requirements of membership in the Organization party to this agreement provided for in Section 1 shall be fully applicable to all regularly employed employes in the crafts or classes represented by such Organization but shall be satisfied if any present or future

employee in engine, train, yard or hostling service who is not regularly employed in the crafts or classes represented by such Organization shall hold or acquire membership in any one of the labor organizations other than the Organization signatory herein, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employes of a craft or class in engine, train, yard or hostling service, that is, an employe engaged in any of the services or capacities covered in Sec. 3; First (h) of the Railway Labor Act, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board; provided, however, that nothing contained in this agreement, shall prevent any employe who is not regularly employed in the crafts or classes represented by such organization from changing membership from one organization to another organization admitting to membership employes of a craft or class in any of the services above specified.

(b) For the purposes of this agreement, employes who retain seniority under the Rules and Working Conditions Agreements between the parties hereto and return to and continue in any service covered thereby for thirty calendar days or more, irrespective of the number of days actually worked during the period, shall be considered regular employes in the crafts or classes represented by the Organization party signatory hereto; and their continued employment subject to such agreements shall be conditioned on compliance with the provisions of Section 3 hereof.

(c) The requirements of membership provided for in SECTION 1 shall also be satisfied if any employe subject to the Working Conditions Agreements between the parties hereto, who on the date on which compliance with this

(Union Shop) Agreement is required is not a member of any one of the labor organizations described in the preceeding paragraph and any new employe entering the service of the Richmond, Fredericksburg and Potomac Railroad, subject to the Working Conditions Agreements after the effective date of this agreement, if otherwise required to be a member, pays to the organization periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required of all members of such organization within the time limits provided for in this agreement.

SECTION 3 — (a) Employes who retain seniority under the Rules and Working Conditions Agreements between the parties hereto and who are regularly assigned or transferred to full-time employment not covered by such agreements, or who, for a period of thirty days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in SECTION 1 of this Agreement so long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. Should such employes return to any service covered by the said Rules and Working Conditions Agreements and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements, be required within thirty-five calendar days from date of their return to such service to comply with the provisions of SECTION 1 or 2 of this agreement.

(b) The seniority status and rights of employes furloughed to service in the Armed Forces or granted leaves of absence to engage in studies under an educational aid

program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this agreement but such employes, shall, upon resumption of employment, be considered as new employes for the purposes of applying this agreement.

(c) Employes who retain seniority under the Rules and Working Conditions Agreements between the parties hereto and who, for reasons other than those specified in *subsections (a) and (b) of this section, are not in service* covered by such agreements, or leave such service, will not be required to maintain membership as provided in SECTION 1 of this agreement so long as they are not in service covered by such agreements, but they may do so at their option. Should such employes return to any service covered by the said Rules and Working Conditions Agreements, they shall as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the Organization signatory hereto, subject to exceptions provided in SECTION 2.

SECTION 4 — Nothing in this agreement shall require an employe to become or to remain a member of the Organization signatory hereto if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employe is denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments shall be deemed to be "uniformly required" if they are required of all em-

ployes in the same status at the same time in the same organizational unit.

SECTION 5 — (a) Each employe covered by the provisions of this agreement shall be considered by the Carrier to have met the requirements of the agreement unless and until the Carrier is advised to the contrary in writing by the Organization. The Organization will notify the Carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employe who it is alleged has failed to comply with the terms of this agreement and who the Organization therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreements. The form of notice to be used shall be agreed upon by the railroad and the Organization and the form shall make provisions for specifying the reasons for the allegation of non-compliance. Upon receipt of such notice, the Carrier will, within ten calendar days of such receipt, so notify the employe concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employe shall be given the Organization. An employe so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall within a period of ten calendar days from the date of receipt of such notice, request the Carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the Carrier shall set a date for hearing which shall be held within ten calendar days of the dates of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing with copy to the Organization, by Regis-

tered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the Organization shall attend and participate in the hearing. A transcript of the proceedings of such hearing shall be made, and a copy shall be furnished to the Local or General Chairman on request. The receipt by the Carrier of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Carrier is rendered.

In the event the employe concerned does not request a hearing as provided herein, the Carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreements not later than thirty calendar days from receipt of the above described notice from the Organization, unless the Carrier and the Organization agree otherwise in writing.

(b) The Carrier shall determine on the basis of the evidence produced at the hearing whether or not the employe has complied with the terms of this agreement and shall render a decision within twenty calendar days from the date that the hearing is closed, and the employe and the Organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision is that the employe has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreements shall be terminated within twenty calendar days of the date of said decision except as hereinafter provided or unless the Carrier and the Organization agree otherwise in writing.

If the decision is not satisfactory to the employe or to the Organization it may be appealed in writing, by Registered Mail, Return Receipt Requested, directly to the highest

officer of the Carrier designated to handle appeals under this Agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Carrier shall promptly notify the other party in writing of any such appeal, by Registered Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty calendar days of the date the notice of appeal is received, and the employe and the Organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision on such appeal is that the employe has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreements shall be terminated within twenty calendar days of said decision unless selection of a neutral is requested as provided below, or unless the Carrier and the Organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Organization or the employe involved requests the selection of a neutral person to decide the dispute as provided in SECTION 5(c) below. Any request for selection of a neutral person as provided in SECTION 5(c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the Carrier designated to handle appeals under this agreement the Organization or the employe involved requests such highest officer in writing by Registered Mail, Return Receipt Requested,

that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Carrier designated to handle appeals under this agreement or his designated representative, the Chief Executive of the Organization or his designated representative, and the employe involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Carrier, the Organization and the employe involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Carrier, the employe and the Organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested. If the position of the employe is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Carrier and the Organization; if the employe's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the Carrier, the Organization and the employe.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the Carrier and the Organization.

(e) Provisions of investigation and discipline rules contained in the Rules and Working Conditons Agreements between the Carrier and the Organization will not apply to cases arising under this agreement.

(f) The General Chairman of the Organization shall notify the Carrier in writing of the title(s) and address(es) of its representatives who are authorized to serve and receive the notices described in this agreement. The Carrier shall notify the General Chairman of the Organization in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this agreement.

(g) In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

SECTION 6 — Other provisions of this agreement to the contrary notwithstanding, the Carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The Carrier may not, however, retain such employe in service under the provisions of this section for a period in excess of sixty calendar days from the date of the last decision rendered under the provisions of Section 5, or ninety calendar days from date of receipt of notice from the Organization in cases where the employe does not request a hearing. The above periods may be extended by agreement between the Carrier and the Organization signatory hereto.

SECTION 7 — An employe whose seniority and employment under the Rules and Working Conditions Agreements is terminated pursuant to the provisions of this agreement or whose employment is extended under SECTION 6 shall have no time or money claims by reason thereof.

If the final determination under SECTION 5 of this agreement is that an employe's seniority and employment shall be terminated, no liability against the Carrier in favor of the Organization or other employes based upon an alleged

violation, misapplication or non-compliance with any part of this agreement shall arise or accrue during the period up to the expiration of the 60 or 90 days periods specified in SECTION 6, or while such determination may be stayed by a court, or while a discharged employe may be restored to service pursuant to judicial determination. During such periods, no provision of any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim or on behalf of any employe against the Carrier predicated upon any action taken by the Carrier in applying or complying with this agreement or upon an alleged violation, misapplication or non-compliance with any provisions of this agreement. If the final determination under SECTION 5 of this agreement is that an employe's employment and seniority shall not be terminated, his continuance in service shall give rise to no liability against the Carrier in favor of the Organization or other employes based upon an alleged violation, misapplication or non-compliance with any part of this agreement.

SECTION 8 — In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the Carrier under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Organization shall indemnify and save harmless the Carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the Carrier is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Carrier acts in collusion with

an employe; provided, further, that the aforementioned liability shall not extend to the expense to the Carrier in defending suits by employes whose seniority and employment are terminated by the Carrier under the provisions of this agreement.

SECTION 9 — This Agreement shall become effective January 1, 1967, and shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Richmond, Virginia, this 20th day of December, 1966.

For:

RICHMOND, FREDERICKSBURG AND
POTOMAC RAILROAD COMPANY

/s/ T. B. Choate
Director of Personnel

For:

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

/s/ W. F. Kidd
General Chairman

Approved:

/s/ R. B. Curtis
Assistant Grand Chief Engineer

Exhibits Annexed to Requests for Admission

RICHMOND, FREDERICKSBURG AND
POTOMAC RAILROAD COMPANY
Broad Street Station
Richmond, Va. 23220

T. B. Choate,
Director of Personnel

W. H. Walters,
Staff Assistant

December 20, 1966

Mr. W. F. Kidd, General Chairman
Brotherhood of Locomotive Engineers
No. 6 Brook Drive, Mayfield Farms
Ellerson, Virginia

Dear Sir:

In discussing the proposed Engineers' Union Shop Agreement in conference on December 20, 1966, it developed that some employes who would be covered thereby have been ousted from the Organization for nonpayment of dues, etc. Some of these employees who owe back dues will have to comply with the Engineers' Union Shop Agreement signed December 20, 1966, and it was understood and agreed that membership in the Organization will be extended to these employes under the same terms and conditions as are generally applicable to employes who have not previously been members thereof and these employes will not be required to pay back dues as a condition of being accepted to membership in the Brotherhood of Locomotive Engineers.

Exhibits Annexed to Requests for Admission

It was further understood and agreed that the Organization will not cite any employe for non-compliance with the Union Shop Agreement dated December 20, 1966 where such membership has been declined by the Organization because of the employe's failure or refusal to pay any sum allegedly owed the Organization incurred prior to March 1, 1967, including but not limited to dues, fees, assessments, fines or penalties.

Yours very truly,

/s/ T. B. Choate
Director of Personnel

AGREED:

/s/ W. F. Kidd
General Chairman, Brotherhood of
Locomotive Engineers

APPROVED:

/s/ R. B. Curtis
Assistant Grand Chief Engineer

Exhibits Annexed to Requests for Admission

DECISION C&T-75 REVISED

MEMORANDUM OF AGREEMENT BETWEEN BOSTON AND MAINE CORPORATION AND ITS EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF RAILROAD TRAINMEN

This Agreement made this thirteenth day of July, 1966, by and between the Boston and Maine Corporation, hereinafter referred to as the Company, and the employees of said company represented by the Brotherhood of Railroad Trainmen, hereinafter referred to as the Brotherhood:

WITNESSETH:

1. It is agreed, as a condition of continued employment, that within sixty calendar days following the beginning of such employment, all employees within the classes or crafts represented by the Brotherhood shall become and remain members of the said Brotherhood: Provided, That this Agreement shall not require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership has been denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the Brotherhood.

2. Every employee shall be considered by the Company to be either a member of the Brotherhood as provided for

herein, or as having been denied membership in the Brotherhood, unless the Company is advised to the contrary in writing by the Brotherhood. The Brotherhood shall be responsible for initiating action to enforce the terms of this Agreement.

3. Employees promoted to official or other positions who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this Agreement; Provided, that if such employee shall have terminated membership during their official capacity, they shall, when returning to service represented by this Brotherhood, come under the provisions of Item 1 of this Agreement.

4. Employees furloughed through reduction in force, sickness or leave of absence, etc., who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this Agreement, but shall, upon resumption of employment, come under Item 1 of this Agreement.

5. The seniority status and rights of employees furloughed to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this Agreement but shall, upon resumption of employment, come under Item 1 of this Agreement.

6. An employee retired on disability annuity under the Railroad Retirement Act at an age earlier than 65 and who retains seniority until he reaches the age of 65, shall

not have his seniority status and rights terminated by reason of non-compliance with the provisions of this Agreement. If employee returns to active service, he shall come under Item 1 of this Agreement.

7. Notice of non-compliance with the provisions of this Agreement of an individual employee coming under Item 1 of this Agreement shall be given in writing by the General Chairman (or his designated representative) of the Brotherhood to the Director Labor Relations and Personnel of the Company not earlier than the expiration of the sixty calendar day period from the date of employment. If after hearing, as provided for in Item 8 hereof, it is determined that the seniority of such employee is to be terminated by reason of non-compliance with the provisions of this Agreement, such termination will not be required to be effected until such time as a qualified replacement is available.

8. (a) Release of any employee from the service of the Company and/or the termination of seniority rights and employment relationship because of non-compliance with the provisions of this Agreement shall not be made without notice. Hearing will be granted if the employee requests it in writing; such hearing will be held within ten days from date of receipt of notice and hearing will be confined to proof of compliance. A decision shall be rendered within five days from date of hearing. Employee's service status will not be affected by reason of provisions of this Agreement.

(b) Discipline rules contained in existing agreements between the Company and the Brotherhood will not apply to cases arising under this Agreement.

9. Employees whose services are terminated for non-compliance with the provisions of this Agreement shall be regarded as having terminated their employee relationship.

10. An employee dropped from the service, as provided for in Item 8 hereof, account of non-compliance with the provisions of this Agreement shall not thereafter be restored to the service except as a new employee, or except as provided for in Item 11 hereof.

11. If an employee is released from the service for non-compliance with the provisions of this Agreement and such release is subsequently determined to be improper, unlawful or unenforceable, the employee shall be returned to service without impairment of seniority rights. In the event an employee brings an action for allegedly wrong discharge, the Brotherhood and the Company shall share equally any liability imposed in favor of such employee.

12. (a) For the sole purpose of handling and disposing of disputes arising under this Agreement, a Special Board of Adjustment is hereby established, in accordance with Section 3, Second, of the Railway Labor Act, as amended, which shall consist of two members, one to be appointed by the Company and one by the Brotherhood.

(b) After hearing is granted under Item 8 hereof, an employee who is notified that he has failed to comply with the membership requirements of this agreement and who wishes to dispute the fact of such failure shall be given a hearing if he submits a request in writing to the Company's Director Labor Relations and Personnel within a period of five (5) calendar days from the date of receipt

of decision rendered under Item 8. The Employee will be notified in writing of the time and place at which such hearing will be held. The hearing shall be confined exclusively to the question of the employee's compliance with the provisions of this Agreement. The employee will be required at this hearing to furnish proof of his compliance with the provisions of this Agreement.

(c) The decision of the Special Board of Adjustment shall be by majority vote and shall be final and binding.

(d) In the event the Special Board of Adjustment is unable to reach a decision, the matter will be submitted to a neutral arbitrator to be selected by the parties or the National Mediation Board, whose decision as to whether or not the employee has complied with the provisions of this agreement shall be final and binding.

(e) Receipt by the Company's Director Labor Relations and Personnel of notice from an employee that he wishes to dispute the charge that he has failed to comply with the membership requirements of this agreement shall operate to stay action on the termination of his seniority and employment pending final decision and for a period of ten (10) calendar days thereafter.

13. No part of this Agreement shall be used in any manner whatsoever as a basis for a grievance or time claim by or on behalf of any employee; and no part of the schedule agreement covering rates of pay and working conditions shall be used as a basis for a grievance or time claim by or on behalf of any employee predicated upon an alleged violation, misapplication or non-compliance with any part of this Agreement relating to Union Shop.

Exhibits Annexed to Requests for Admission

14. This Agreement is in full, final and complete settlement of the dispute growing out of the request contained in the notice served on the Boston and Maine Corporation on May 26, 1966, by the Brotherhood of Railroad Trainmen. This agreement shall become effective July 15, 1966, and shall remain in effect until revised or cancelled in accordance with the provisions of the Railway Labor Act, as amended. Decision C&T-75 is hereby cancelled.

For the Employees Represented By the
Brotherhood of Railroad Trainmen

/s/ J. L. Scanlan
J. L. SCANLAN
General Chairman

For the Boston and Maine
Corporation

/s/ W. J. Ahearne
W. J. AHEARNE
Director Labor Relations and
Personnel

APPROVED:

/s/ W. J. Weil
W. J. WEIL
Vice President

Boston, Massachusetts, July 13, 1966.

Exhibits Annexed to Requests for Admission

NATIONAL MEDIATION BOARD
WASHINGTON

CASE NO. R-2851
CERTIFICATION
June 23, 1954

In the matter of
REPRESENTATION OF EMPLOYEES
of the
CONEMAUGH & BLACK LICK RAILROAD COMPANY
Locomotive Engineers

The services of the National Mediation Board were invoked by the Brotherhood of Locomotive Firemen and Enginemen to investigate and determine who may represent for purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Locomotive Engineers, employees of the Conemaugh & Black Lick Railroad Company.

At the time application was received these employees were represented by the United Steelworkers of America, CIO.

The Board assigned Mediator C. Robert Roadley to investigate and after finding that a dispute existed among the employees concerned, directed him to conduct an election by secret ballot to determine their choice, using an agreed to eligible list.

Exhibits Annexed to Requests for Admission

Following is the result of the election as reported by Mediator Thomas A. Tracy, who was assigned to count the ballots in this case, and attested on June 18, 1954, by representatives of the contesting organizations who acted as observers.

Number of employees voting:

	United Steelworkers of America, CIO	*Brotherhood of Locomotive Firemen & Enginemen*	*Void Ballots*	*Number of Employees Eligible*
Locomotive Engineers	33	32	1	68

FINDINGS AND CERTIFICATION

The National Mediation Board, upon the whole record, including the reports of the Mediators, finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein and that the interested parties were given due notice of investigation, whereupon the National Mediation Board certifies that:

The United Steelworkers of America, CIO, has been duly designated and authorized to continue to represent for purposes of the Railway Labor Act, the craft or class of Locomotive Engineers, employees of the Conemaugh & Black Lick Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

E. C. Thompson, Sec'y.

Exhibits Annexed to Requests for Admission

NATIONAL MEDIATION BOARD
WASHINGTON

CASE NO. R-1904
CERTIFICATION
October 1, 1947

In the matter of
REPRESENTATION OF EMPLOYEES
of the
CONEMAUGH & BLACK LICK RAILROAD COMPANY
Locomotive Engineers

The services of the National Mediation Board were invoked by the United Steelworkers of America, CIO, to investigate and determine who may represent locomotive engineers, employed by the Conemaugh & Black Lick Railroad Company, for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof.

At the time application was received these employees were represented by the Brotherhood of Locomotive Firemen and Enginemen.

The Board assigned Mr. Lawrence Farmer, Mediator, to investigate, and after finding that a dispute existed among the employees concerned, directed him to conduct an election by secret ballot to determine their choice, using an eligible list agreed to by representatives of the contesting organizations.

Exhibits Annexed to Requests for Admission

Following is the result of the election as reported by the mediator and attested to on September 26, 1947, by representatives of the contesting organizations who acted as observers.

Number of employees voting:

	For United Steelworkers of America, CIO	*For Brotherhood Locomotive Firemen & Enginemen*	*Number Employees Eligible to Vote*
Locomotive Engineers	60	46	106

On the basis of the investigation and report of election, the National Mediation Board hereby certifies that the United Steelworkers of America, CIO, has been duly designated and authorized to represent the craft or class of locomotive engineers, employed by the Conemaugh & Black Lick Railroad Company, for purposes of the Railway Labor Act.

By order of the NATIONAL MEDIATION BOARD.

Robert F. Cole
Secretary

Exhibits Annexed to Requests for Admission

NATIONAL MEDIATION BOARD
WASHINGTON

James W. Carmalt, Chairman
Otto S. Beyer
William M. Leiserson

George A. Cook, Secretary

CASE NO. R-236
CERTIFICATION
April 23, 1937

In the matter of
REPRESENTATION OF EMPLOYEES
of the
CONEMAUGH AND BLACK LICK RAILROAD
Train, Engine and Yard Service Employees

The services of the National Mediation Board were invoked by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen to settle a dispute as to who may properly represent conductors, brakemen and switchtenders, locomotive engineers, firemen, hostlers and engine inspectors, employed by the Conemaugh and Black Lick Railroad, as provided by Section 2, Ninth, of the Railway Labor Act, amended.

This case was first investigated by Mediator Wm. F. Mitchell, Jr., and later by Mediator P. D. Harvey.

The Mediators conferred with representatives of the carrier and the employees, and were furnished by the employee

representatives with original authorizations signed by employees designating the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen as their duly designated representatives for the purposes of the Railway Labor Act.

The carrier denied the existence of a dispute among the employees, claiming that it deals with and will continue to deal with any representative designated by any individual employee or groups of employees. It, therefore, refused the Mediator access to the payroll records. The employees, however, insisted upon a certification from this Board in keeping with the provisions of the Railway Labor Act.

The Mediators' investigation developed that some, but not all, of the employees desired representation by the above-named organizations, and that a representation plan is maintained on the property under which elections were recently held and representatives chosen to represent the same class of employees whom the employees named above claim they have been designated to represent by a majority.

In view of these differences as to who are the proper representatives, and in view of the provisions of Section 2, Fourth, of the Railway Labor Act that "the majority of any craft or class shall have the rights to determine who shall be the representative of the craft or class for the purposes of this Act", the Board found that a representation dispute, within the meaning of Section 2, Ninth, of the Act, existed among the employees and instructed Mediator Harvey to proceed with the investigation accordingly.

Being unable to secure access to the payroll records of the carrier the Board was unable to take a secret ballot, and therefore utilized another appropriate method of ascertain-

ing the names of the duly designated and authorized representatives of the employees in such manner as to insure the choice of representatives of the employees without interference, influence or coercion exercised by the carrier.

The monthly report of employees, service and compensation made by the carrier to the Interstate Commerce Commission for the month of January 1937 shows the number of employees working in train and yard service during that month was 157; that is, conductors, brakemen, yard foremen, yard helpers and switchtenders. The Mediator's report showed that there were approximately 158 employees as above on the seniority roster at the time of the investigation who were eligible to participate in the election of representatives for these employees. 121 of these employees signed authorizations designating and authorizing the Brotherhood of Railroad Trainmen as their representative.

The report of employees and compensation made by the carrier to the Interstate Commerce Commission for the month of January 1937 shows the number of employees that worked in engine service was 162. The report of investigation made by Mediator Harvey shows that there were approximately 166 employees in this class on the seniority roster at the time of his investigation eligible to participate in the selection of representatives for the purposes of the Railway Labor Act. 116 of these employees signed authorizations designating and authorizing the Brotherhood of Locomotive Firemen and Enginemen as their representative.

By personal interview with the employees in engine service the mediator checked the authorizations of 108 which had designated the Brotherhood of Locomotive Firemen and Enginemen as their representative. These were deter-

mined to be true and authenticated signatures of employees of the carrier. It was not possible to check the remaining signatures to the authorizations, but this was not necessary, as the 108 proved authorizations constituted a clear majority of the total of engine service employees who were eligible to participate in the choice of representatives, and these showed that a majority of the engineers and a majority of the firemen, hostlers and engine inspectors each chose the Brotherhood of Locomotive Firemen and Enginemen.

Of the conductors, brakemen, yard foremen, yard helpers and switchtenders the mediator authenticated 117 signatures of employees designating the Brotherhood of Railroad Trainmen as the representative of these employees, and these showed that a majority of the conductors and brakemen and a majority of the yard foremen, yard helpers and switchtenders each chose this organization.

On the basis of the investigation the National Mediation Board hereby certifies that the Brotherhood of Railroad Trainmen has been duly designated and authorized to represent conductors, brakemen, yard foremen, yard helpers and switchtenders, and that the Brotherhood of Locomotive Firemen and Enginemen has been duly designated and authorized to represent locomotive engineers, firemen, hostlers and engine inspectors, employees of the Conemaugh and Black Lick Railroad for the purposes of the Railway Labor Act.

By order of the NATIONAL MEDIATION BOARD.

George A. Cook,
Secretary.

Exhibits Annexed to Requests for Admission

NATIONAL MEDIATION BOARD
WASHINGTON

CASE NO. R-1240
CERTIFICATION
May 16, 1944

In the matter of
REPRESENTATION OF EMPLOYEES
of the
CONEMAUGH & BLACK LICK RAILROAD COMPANY
(1) Locomotive Engineers, (2) Locomotive Firemen, Hostlers and Hostler Helpers and (3) Yardmen (Foremen, Helpers and Switchtenders)

The services of the National Mediation Board were invoked by the United Steelworkers of America, C.I.O., to investigate and determine who may represent (1) locomotive engineers, (2) locomotive firemen, hostlers, and hostler helpers, and (3) yardmen (foremen and helpers), employed by the Conemaugh and Black Lick Railroad Company, for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof.

At the time application was received the locomotive engineers and locomotive firemen, hostlers and hostler helpers were represented by the Brotherhood of Locomotive Firemen and Enginemen, and the yardmen (foremen, helpers and switchtenders) were represented by the Brotherhood of Railroad Trainmen.

Exhibits Annexed to Requests for Admission

The Board assigned Mr. Cornelius E. Hurley, Mediator, to conduct investigation, and after finding that a dispute existed among the employees concerned, directed him to take a secret ballot to determine their choice. Representatives of the contesting organizations agreed to an eligible list, which included switchtenders in the craft or class of yardmen.

Following is the result of the election as reported by the mediator and attested to by the representatives of the contesting organizations who acted as observers:

Number of employees voting for contesting organizations:

	For United Steelworkers of America, C.I.O.	*For Brotherhood of Locomotive Firemen and Enginemen*	*For Brotherhood of Railroad Trainmen*	*Void ballots*	*Number of employees eligible to vote*
Locomotive Engineers	34	47		0	82
Locomotive Firemen, Hostlers and Hostler Helpers	54	45		0	101
Yardmen (Foremen, Helpers and Switchtenders)	90		83	2	182

On the basis of the investigation and report of election the National Mediation Board hereby certifies that the United Steelworkers of America, C.I.O., has been duly designated and authorized to represent the crafts or classes of

locomotive firemen, hostlers and hostler helpers, and yardmen (foremen, helpers and switchtenders), employed by the Conemaugh and Black Lick Railroad Company, for the purposes of the Railway Labor Act.

The Board further certifies that no change in representation is desired by the craft or class of locomotive engineers, employed by the Conemaugh and Black Lick Railroad Company.

By order of the NATIONAL MEDIATION BOARD.

/s/ THOMAS E. BICKERS
THOMAS E. BICKERS
Secretary

(R. 427-446)

Requests for Admission Under Rule 36
Dated June 6, 1967

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

Defendant, Brotherhood of Railroad Trainmen, requests the plaintiffs, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents exhibited with this request is genuine:

A. Certification of the National Mediation Board, dated March 1, 1950, designating the Brotherhood of Railroad Trainmen to represent for purposes of the Railway Labor Act, the road conductors, employees of the Delaware, Lackawanna and Western Railroad Company, its successors and assigns.

B. Certification of the National Mediation Board, dated December 29, 1951, designating and authorizing the Brotherhood of Railroad Trainmen to continue to represent for purposes of the Railway Labor Act the craft or class of road conductors, employees of the Erie Railroad Company, its successors and assigns.

Requests for Admission Under Rule 36
Dated June 6, 1967

C. Certification of the National Mediation Board, dated May 7, 1965, authorizing the Brotherhood of Railroad Trainmen to continue to represent, for the purposes of the Railway Labor Act, the craft or class of Switchmen (Yardmen), employees of the Erie Lackawanna Railroad Company, its successors and assigns.

D. Findings of Fact and Conclusions of Law of Hon. Julius J. Hoffman, dated May 24, 1967, in the case of W. L. Birkholz, et al, Plaintiffs, v. Elmer L. Dirks, et al., brought in the United States District Court for the Northern District of Illinois, Eastern Division, No. 67 C 285.

E. Judgment Order signed by Hon. Julius J. Hoffman, United States District Judge, on May 24, 1967, in the case of W. L. Birkholz, et al., Plaintiffs, v. Elmer L. Dirks, et al., Defendants, brought in the United States District Court for the Northern District of Illinois, Eastern Division, No. 67 C 285.

Dated: New York, N.Y.
June 6, 1967.

Requests for Admission Under Rule 36
Dated June 6, 1967

Yours, etc.

ARNOLD B. ELKIND
Attorney for Defendants,
Brotherhood of Railroad
Trainmen and W. J. Weil
122 East 42nd Street
New York, N.Y. 10017

To:

ALAN P. PERL, ESQ.
Sturm and Perl
150 Broadway
New York, N.Y.
LEE LEIBIK
RUTH WEYAND
343 South Dearborn Street
Chicago, Illinois 60604
Attorneys for Plaintiffs
and Intervenor-Plaintiffs

Exhibits Annexed to Requests for Admission

[STAMP]

NATIONAL MEDIATION BOARD
WASHINGTON

CASE No. R-2234

Certification

March 1, 1950

In the matter of

REPRESENTATION OF EMPLOYEES

of

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

Road Conductors

The services of the National Mediation Board were invoked by the Order of Railway Conductors of America to investigate and determine who may represent for purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the road conductors, employees of the Delaware, Lackawanna and Western Railroad Company.

At the time application was received these employees were represented by the Brotherhood of Railroad Trainmen, under certification issued by the Board on January 14, 1947, in Case No. R-1679.

The Board assigned Mediator Clarence G. Eddy to investigate, and after finding that a dispute existed among

the employees concerned, directed him to conduct an election by secret ballot to determine their choice, using an eligible list agreed to by the contesting organizations.

Following is the result of the election as reported by the mediator and attested on February 20, 1950, by representatives of the contesting organizations who acted as observers:

Number of employees voting:

	Brotherhood of Railroad Trainmen	*Order of Railway Conductors of America*	*Void Ballots*	*Number Employees Eligible*
Road Conductors	137	99	1	243

FINDINGS AND CERTIFICATION

The National Mediation Board, upon the whole record and the report of the mediator, finds that the carrier and the employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation; whereupon the National Mediation Board hereby certifies that:

The Brotherhood of Railroad Trainmen has been duly designated and authorized to continue to represent for purposes of the Railway Labor Act, the road conductors, employees of the Delaware, Lackawanna and Western Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

/s/ THOMAS E. BICKERS
Thomas E. Bickers
Secretary

Exhibits Annexed to Requests for Admission

[STAMP]

NATIONAL MEDIATION BOARD
WASHINGTON

CASE No. R-2457

Certification

December 29, 1951

In the matter of

REPRESENTATION OF EMPLOYEES

of the

ERIE RAILROAD COMPANY

Road Conductors

The services of the National Mediation Board were invoked by the Order of Railway Conductors of America to investigate and determine who may represent for purpose of the Railway Labor Act as provided by Section 2, Ninth thereof, the craft or class of road conductors, employees of the Erie Railroad Company.

At the time application was received, these employees were represented by the Brotherhood of Railroad Trainmen.

The Board assigned Mediator Thomas A. Tracy to investigate and after finding that a dispute existed among the employees concerned, directed him to conduct an election by secret ballot to determine their choice, using an eligible list agreed to by the contesting organizations.

Exhibits Annexed to Requests for Admission

Following is the result of the election as reported by the mediator and attested on December 17, 1951, by representatives of the contesting organizations who acted as observers:

Number of employees voting:

	Brotherhood of Railroad Trainmen	*Order of Railway Conductors of America*	*Number Employees Eligible*
Road conductors	259	197	466

FINDINGS AND CERTIFICATION

The National Mediation Board, upon the whole record and the report of the mediator, finds that the carrier and the employees in this case are respectively a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein and that the interested parties were given due notice of investigation whereupon the National Mediation Board certifies that:

The Brotherhood of Railroad Trainmen has been duly designated and authorized to continue to represent for purposes of the Railway Labor Act the craft or class of road conductors, employees of the Erie Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

E. C. THOMPSON
Secretary

Exhibits Annexed to Requests for Admission

NATIONAL MEDIATION BOARD
Washington, D. C. 20572

CASE No. R-3699

CERTIFICATION

May 7, 1965

In the Matter of

REPRESENTATION OF EMPLOYEES

of the

ERIE LACKAWANNA RAILROAD COMPANY

Switchmen (Yardmen)

The services of the National Mediation Board were invoked by the Switchmen's Union of North America, to investigate and determine who may represent, for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Switchmen (Yardmen), employees of the Erie Lackawanna Railroad Company.

At the time the application was received these employees were represented by the Brotherhood of Railroad Trainmen.

The Board assigned Mediator Eugene C. Frank to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the employees concerned, and by direction of the Board, the

mediator was instructed to conduct an election by secret ballot to determine the employees' representation choice.

The following is the result of the election as reported by the mediator above, and attested thereon by the party observers.

Number of Employees Voting:

	Switchmen's Union of North America	*Brotherhood of Railroad Trainmen*	*Void Ballots*	*Number Employees Eligible*
Switchmen (Yardmen)	950	993	7	2,022

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION

Therefore, the National Mediation Board certifies that the Brotherhood of Railroad Trainmen has been duly authorized to continue to represent, for the purposes of the Railway Labor Act, the craft or class of Switchmen (Yardmen), employees of the Erie Lackawanna Railroad Company, its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

Sgd. THOMAS A. TRACY
Executive Secretary

(R. 447-459)

Notice of Motion for Summary Judgment by Plaintiffs and Intervenor Plaintiffs

IN THE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 Civ. 1264

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of ALAN F. PERL, sworn to the 7th day of June, 1967, and upon all of the pleadings and proceedings heretofore had and filed herein, the undersigned will move this Court at a Motion Part thereof, to be held at Room 506 of the United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 20th day of June, 1967 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order granting summary judgment herein in favor of the plaintiffs and the interyenor-plaintiffs declaring that a certain agreement entered into on March 14, 1967 and April 4, 1967 between the defendant Erie Lackawanna Railroad Company and the defendant Brotherhood of Railroad Trainmen, which agreement is the subject of this lawsuit, be declared invalid and in violation of Section 2, Fifth and Eleventh (c) of the Railway Labor Act; and for a further order granting judgment in favor of the plaintiff Switchmen's Union of North America and in favor of the plaintiff John P. O'Connell and against the defendant Brotherhood of Railroad Trainmen dismissing the counterclaim of the defendant Brotherhood of Railroad Trainmen, and for such other and further relief as the Court may

deem just and proper including costs and disbursements of this action.

PLEASE TAKE FURTHER NOTICE that opposing papers, if any, are to be served upon counsel for the moving party no later than three (3) days prior to the return date of this motion.

Dated: New York, June 7, 1967

Yours etc.

STURM AND PERL
ALAN F. PERL
150 Broadway
New York City 10038

and

LEE LEIBIK
RUTH WEYAND
343 South Dearborn Street
Chicago, Illinois 60604
Attorneys for Plaintiffs and Intervenor-Plaintiffs

To:

ARNOLD B. ELKIND, Esq.
Attorney for Defendants Brotherhood of Railroad Trainmen and W. J. Weil
122 East 42nd Street
New York City 10017

RAYMOND H. BRANDA, Esq.
Attorney for Defendant Erie Lackawanna Railroad Co.
140 Cedar Street
New York City

Affidavit of Alan F. Perl in Support of Motion for Summary Judgment by Plaintiffs and Intervenor Plaintiffs

IN THE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 Civ. 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ALAN F. PERL, being duly sworn, deposes and says: I am one of the attorneys for the plaintiffs and intervenor plaintiffs in this action and am executing this affidavit in support of the instant motion for summary judgment.

This is an action for a permanent injunction. The plaintiffs and the intervenor-plaintiffs are all employees of the defendant Erie Lackawanna Railroad Company. The plaintiffs are members of the Switchmen's Union of North America and the intervenor-plaintiffs are members of the Order of Railway Conductors and Brakemen.

The defendant Brotherhood of Railroad Trainmen is a labor Union holding the colective bargaining agreement with the defendant Railroad. The individual defendants are officers of the defendant Brotherhood. On or about March 14, 1967 and on April 4, 1967 the defendants Erie Lackawanna Railroad Company and the Brotherhood of Railroad Trainmen entered into an agreement which re-

Affidavit of Alan F. Perl in Support of Motion for Summary Judgment by Plaintiffs and Intervenor Plaintiffs

quired in part, that all employes of the defendant Railroad engaged in the crafts of conductors, ticket collectors, baggagemen, trainmen and yard service employees, become and remain members of the defendant Brotherhood of Railroad Trainmen as a condition of continued employment.

As stated above, all of the plaintiffs and intervenor-plaintiffs are and have been members of the Switchmen's Union of North America and the Order of Railway Conductors and Brakemen.

This action was instituted by the plaintiffs by service of a summons and verified complaint requesting, principally, a permanent injunction with regard to the aforesaid compulsory membership section of the agreements between the defendants, on the ground that said section of such agreements are illegal pursuant to the applicable section of the Railway Labor Act.

Application for a temporary injunction was made by plaintiffs by order to show cause dated March 31, 1967. The plaintiffs alleged serious and irreparable damage to them if the clause complained of were to be given effect. The motion came on for argument before Judge Herlands. The pleadings and exhaustive memoranda of law were submitted to him. By his order and opinion dated April 27, 1967 Judge Herlands granted plaintiffs' application for a temporary injunction and the defendants and each of them were enjoined from giving force and effect to the clause complained of.

This Court is respectfully referred to the plaintiffs' memorandum of law submitted in support of the motion for a temporary injunction and the same is incorporated by

Affidavit of Alan F. Perl in Support of Motion for Summary Judgment by Plaintiffs and Intervenor Plaintiffs

reference as if again fully set forth on this motion. The Court is further respectfully directed to the scholarly, well-reasoned and fully documented opinion of Judge Herlands which granted the motion for a temporary injunction. Judge Herlands' opinion is part of the file in this case and your deponent wishes to incorporate it by reference as if fully set forth herein.

After the motion for temporary injunction was granted on behalf of the original plaintiffs, the intervenor-plaintiffs moved for leave to intervene on the ground that they were in exactly the same situation as the original plaintiffs. Judge Murphy granted the motion to intervene and the verified complaint of the intervenor-plaintiffs was then filed and made a part of the record in this case. The Court is respectfully referred to the contents of the verified complaint of the intervenor-plaintiffs as if the same were again fully set forth herein. By further stipulation entered into in the Chambers of Judge Wyatt, the parties agreed that the temporary injunction in favor of the original plaintiffs would have like applicability to the intervenor-plaintiffs. Thus all plaintiffs and intervenor-plaintiffs now stand in the same position.

It is respectfully submitted that there are no contested issues of fact in this matter. The facts are simple. The defendants have entered into an agreement which would force all of the plaintiffs and intervenor-plaintiffs to join the defendant Brotherhood of Railroad Trainmen. It is this provision of the contracts that is contested as being illegal and contrary to the applicable sections of the Railway Labor Act. It is respectfully submitted that the sole

Affidavit of Alan F. Perl in Support of Motion for Summary Judgment by Plaintiffs and Intervenor Plaintiffs

issue before the Court is a question of law. This entire legal question was gone into in depth on the motion for a temporary injunction. The question was decided in favor of the plaintiffs. Judge Herlands resolved the issue of probable success in favor of the plaintiffs, based upon the situation as it exists. He further resolved the question of law before him, on the motion for temporary injunction, in favor of plaintiffs. He could not have granted the motion for temporary injunction without finding the clause complained against was truly illegal within the meaning of the applicable sections of the Railway Labor Act.

There is no need to resolve the question of plaintiffs' original claim for damages, since the temporary injunction was granted and no damages have accrued. In a like manner, the defendants' counterclaim for damages could be an issue only if the contract complained of was valid, as a matter of law. If this Court should resolve the issue of the invalidity of the clause complained of in favor of plaintiffs, then the counterclaim for damages must of necessity be dismissed.

In view of all of the above, your deponent respectfully prays that since there are no issues of fact to be determined on trial, this motion for summary judgment should be granted in all respects.

ALAN F. PERL

(Sworn to June 7, 1967)

Affidavit of Arnold B. Elkind in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.:*

ARNOLD B. ELKIND, being duly sworn, deposes and says:

I am the attorney for the defendant, Brotherhood of Railroad Trainmen (hereinafter the "Brotherhood"), and make this affidavit in opposition to the plaintiffs' motion for summary judgment. The affidavit is also incorporated by reference in support of the Brotherhood's motion for summary judgment dismissing the complaint.

I have represented the Brotherhood since the inception of this litigation and am fully familiar with all of the proceedings heretofore had herein.

Since 1958, I have been a Legal Counsel for the Brotherhood and by reason of that association have acquired a sufficient knowledge of the operation of labor relations in the railroad industry to verify the accuracy of the statements with regard thereto, that are hereinafter set forth.

In the process of preparing for a trial of the proceeding brought by the plaintiffs herein against the Brotherhood I have conducted discovery proceedings, including depositions of the Switchmen's Union, Interrogatories addressed to the plaintiffs, and Requests for Admission. These form

the evidentiary record from which I have made statements with regard to the plaintiffs.

I have studied the legislative history of the 1951 Amendment to the Railway Labor Act, which authorizes and permits a union shop agreement in the railroad industry, including the hearings before the Committees of both the House and the Senate, the Reports on the legislation from the Subcommittee on Labor and Public Welfare of the Senate and from the Committee on Interstate and Foreign Commerce of the House, as well as the Congressional Record reporting the debates and discussion in both the Senate and the House on these amendments.

Based on the knowledge and information thus acquired, the following statements are true to the best of my knowledge, information and belief:

PRIOR PROCEEDINGS

This proceeding was commenced on March 31, 1967 by three employees of the Erie Lackawanna Railroad Company who claim to belong to the Switchmen's Union of North America, and by the Switchmen's Union of North America. They seek to restrain the Brotherhood and the Erie Lackawanna Railroad, the employer of the individual plaintiffs, from putting into operation a collective bargaining agreement which on its face seems to require the plaintiffs and similarly situated employees of the Erie Lackawanna Railroad to join and maintain membership in the Brotherhood. Plaintiffs also seek a declaratory judgment to the effect that the said agreement (hereinafter referred to as the "union shop agreement") "violates Section 2, Fifth and Eleventh (c) of the Railway Labor Act, as amended,

and hence is null and void and of no effect". A claim for money damages has been abandoned.

On April 3, 1967 the plaintiffs served an Order to Show Cause and affidavit in support of an injunction *pendente lite*. Said motion was returnable the following day, April 4, 1967, and was actually argued before Judge Herlands on April 5, 1967. All briefs were submitted by April 6, 1967.

I call to the Court's attention the brief span of time between the making of the motion for the temporary injunction, the argument for the temporary injunction and the final exchange of briefs, because I am firmly convinced that the rush of events impaired my opportunity to familiarize Judge Herlands with all of the facts and circumstances which I now believe were germane to the issue of whether or not a temporary injunction should have been issued in this case.

Furthermore, if the Court will refer to the briefs which were submitted to Judge Herlands, the Court will note that the original memorandum submitted by the plaintiffs in support of the motion was a relatively short document consisting of a little over 4 pages. The plaintiffs' memorandum on which Judge Herlands seems to have relied, judging from his opinion, was a 25 page document with perhaps an additional 100 pages of exhibits and supporting memoranda. This memorandum was submitted by the plaintiffs after argument. I had no opportunity under the Rules to answer the plaintiffs' contentions since they were not made a part of the moving papers in accordance with the usual practice in this Court.

I would further call the Court's attention preliminarily to the circumstance that the defendants, Erie Lackawanna Railroad Company and the Brotherhood, were of the single

mind that resistance to the plaintiffs' motion should essentially be based on the pragmatic consideration that there is and was at no time a threat of immediate irreparable injury to any of the plaintiffs requiring the drastic relief of an injunction *pendente lite* and upon a showing that we were agreeable to an early trial. It was only during the course of argument, when Judge Herlands expressed an interest in the question of whether or not there was any possibility of success on the part of the plaintiffs, that I alluded in my argument to the merits of the controversy, and made brief reference to the legislative history of the union shop provision in the Railway Labor Act; in fact, it was only at that time, that I submitted to Judge Herlands and served on the plaintiffs a memorandum which I had hurriedly prepared on 1 or 2 days notice and which I, in retrospect, mistakenly assumed would clearly demonstrate to Judge Herlands that there was no merit to the position taken by the plaintiffs with respect to the union shop agreement under attack.

I felt reenforced in that view since I learned that the day before in a companion case Judge Julius Hoffman, in the U.S. District Court in Illinois, had held a parallel union shop provision to be valid.[1]

In any event, Judge Herlands seems to have relied heavily on the complaint and answering memorandum submitted by the plaintiffs, the former of which misrepresented facts and the latter of which distorted decisional law and legislative history and which apparently was designed to feed on a lack of understanding of labor relations in the railroad industry. He wrote an opinion supporting the grant-

[1] See additional Requests to Admit dated June 6, 1967, Numbers D and E, containing Findings of Fact and Law and judgment order in that case.

ing of plaintiffs' motion which the plaintiffs now describe, of course, as extensive, thorough and carefully documented, and which they allege sets forth all of the pertinent facts and upon which they rely completely in support of their motion for summary judgment.

It is my view that Judge Herlands' opinion, while seeming to be carefully reasoned, reflects erroneous assumptions, and that the Court can be best guided by considering the issues *de novo*. I say this because the learned Judge did not have the facts which I am about to present to the Court, was misled with respect to Congressional intent based on legislative history, misconstrued the nature of collective bargaining in the railroad industry, and demonstrably misunderstood the impact that his decision, if it became law, would have on the work load of the Federal judiciary.

Following Judge Herlands' decision on the motion for an injunction *pendente lite* I did not oppose an application by the Order of Railway Conductors and Brakemen to intervene as a party plaintiff, along with three other employees who belong to that union, and I also agreed that the temporary injunction be deemed enlarged so as to extend to cover employees who maintain membership in the Order of Railway Conductors and Brakemen as well as the Switchmen's Union of North America, and to employees on the Western District as well as the Eastern District of the Erie Lackawanna Railroad.

Subsequent to the granting of the injunction *pendente lite*, and on May 16, 1967, Judge Herlands fixed the security to be paid by the plaintiffs in the sum of $10,000.00.

Affidavit of Arnold B. Elkind in Opposition to Plaintiffs' Motion

FACTS WHICH THE BROTHERHOOD BELIEVE ESSENTIAL TO AN UNDERSTANDING OF THE ISSUES

Before discussing the pleadings and issues of law and fact, it seems to me that the Court should be aware of certain aspects of railroad unionism, so that the consideration of the problem at hand will not be "in a vacuum".[2]

Perhaps the first fact with respect to labor relations in the railroad industry which should be understood by the Court is with respect to the nature of individual job security, job benefits and seniority rights. While seniority rights and job benefits are enforced by labor unions, they in no sense relate to or are coincident with union membership. All seniority dates from the beginning of the employer-employee relationship in the particular craft in which the employee is engaged. The date of employment in a particular craft becomes the seniority date. The date of union membership, as well as the fact of membership in any union, is irrelevant to the issue of seniority. I am not aware of any job benefits which are in any sense dependent upon union membership.

If an employee has a particular grievance or a claim against his employer, or is allegedly mistreated by his employer, it is the duty under the law of his duly authorized collective bargaining agent, if requested to do so, to represent that employee. It must do so without discrimination, regardless of whether or not the employee belongs to the union.[3] Union membership is irrelevant to that issue.

Collective bargaining traditionally is carried on throughout the railroad industry on a railroad craft basis. This is

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[2] *Pennsylvania R. Co.* v. *Rychlik*, 352 U.S. 480, 488 (1957).

[3] *Brotherhood of Sleeping Car Porters* v. *Thompson*, 367 F.2d 489 (4th Cir. 1966).

initiated by the service of notices under Section 6 (45 U.S.C. §156) of the Railway Labor Act. Negotiations must inure equally to the benefit of all employees in the crafts or classes which the union represents. There can be no discrimination as a matter of law in any collective bargaining procedures conducted by the collective bargaining agent for the craft or class.[4] Union membership is irrelevant insofar as whether or not an employee is entitled to the beneficial results of collective bargaining efforts.

The collective bargaining agent can be held liable in damages for misfeasance or nonfeasance in representing employees. [A verdict of $56,500.00 was recently obtained against a railroad union based on a dereliction to an employee who was not a member of that union, and the Supreme Court denied certiorari in March of 1967.[5]] The responsibility of unions to perform adequately as collective bargaining agents and as grievance advocates exists for the benefit of all employees, whether union members or not.

As a matter of law, the Brotherhood cannot deprive a man of his employment or job benefits if he is willing to financially bear his pro-rata share for the union's efforts with his employer. Both the Railway Labor Act and union shop agreements (including the one under attack here), safeguard employment rights with respect to any employees to whom membership in the Brotherhood is not available upon the same terms and conditions as are generally applicable to any other member. Furthermore, even assuming there were employees to whom membership in the Brother-

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[4] *Steele* v. *L & N R.R. Co.*, 323 U.S. 192 (1944). *Turnstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U.S. 210 (1944).

[5] *Brotherhood of Sleeping Car Porters* v. *Thompson, supra*, cert. den. —— U.S. ——, 18 L.Ed. 2nd 110 (1967).

hood was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership, such employees are simply not required to become members of the Brotherhood but can continue their employment freed of obligation to the Brotherhood. This is in strict accordance with the statutory safeguard set forth in paragraph Eleventh (a) of Section 2 of the Railway Labor Act [45 U.S.C. 152 Eleventh (a).]

The practical effect of this contractual and statutory safeguard is to make irrelevant any questions of discrimination by reason of color, creed, anti-union activities, support for competing unions, political beliefs of employees, or the religious convictions of any employee against joining unions, or, as here contended, the constitutional provisions of the Brotherhood constitution. All that is necessary is that the employee tender his dues, initiation fees and assessments (which must be uniform). If the Brotherhood refuses to accept dues or refuses membership upon any ground other than non-payment of dues, such an employee is entitled to continue his employment and enjoys the status of a "free rider" exempt from the burdens of paying dues or belonging to a railroad union. This, as a practical matter, inhibits the Brotherhood from enforcing such provision in its Constitution as the plaintiffs refer to in their complaint, assuming such provision does in fact exist at the present time and regardless of the interpretation placed thereon by the plaintiffs.

I point these matters out to the Court so that it may be clearly understood that there is no particular mystique surrounding union membership in the railroad industry and

that there is nothing sinister in seeking to impose upon employees the duty of financially supporting the instrumentality which has the duties and burdens under the Railway Labor Act of representing 100% of the employees with management. As I will later show, this was the principal objective of the 1951 Amendments to the Railway Labor Act authorizing the union shop.

The defendant, Erie Lackawanna Railroad Company, came into being in 1960 as the result of a merger and acquisition proceeding duly approved by the Interstate Commerce Commission pursuant to Section 5(a) of the Interstate Commerce Act [49 U.S.C. §15(2)] and Section 20(a) of the Interstate Commerce Act [49 U.S.C. §20(a)]. The properties thus merged were originally the Erie Railroad Company and the Delaware, Lackawanna & Western Railroad Company. In the 7 years of the Carrier's existence the Brotherhood, though challenged for representational authority on two occasions by the Switchmen's Union of North America on September 22, 1961 and again on September 11, 1964,[6] has been the only collective bargaining agent certified or recognized by the National Mediation Board[7] and authorized to represent for the purposes of the Railway Labor Act the craft and classes of Road Conductors, Yardmen (Switchmen) and all other Train Service employees on the Erie Lackawanna Railroad.[8] Neither the Switchmen's Union of North America nor the Order of Railway Conductors and Brakemen have any contractual

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[6] Answers to Interrogatories by Switchmen's Union, No. 16.

[7] Procedure established by Section 2, Ninth of the Railway Labor Act, 45 U.S.C. 102, Ninth.

[8] Copy of certification of May 7, 1965 annexed to Requests for Admission dated June 6, 1967, and admitted (No. C).

relationship with the Erie Lackawanna Railroad.[9] Neither of these unions have ever been certified or recognized by the National Mediation Board as the duly designated representative of any of the employees of the Erie Lackawanna Railroad.

The Brotherhood does the collective bargaining for all Train Service employees on the Erie Lackawanna Railroad. As an indication of the services rendered by the Brotherhood, there is annexed hereto as defendant's Exhibit 1 a letter dated June 1, 1967, from the Erie Lackawanna Railroad Company, to the General Chairman for the Western District of the Brotherhood, setting forth a number of subjects that are presently on the collective bargaining table for negotiation in order to improve the rules and working conditions of the employees.

Exhibits 2 through 11 are examples of the types of agreement worked out by the Brotherhood for the benefit of *all employees* in the crafts which it represents, including these six individual plaintiffs and their co-unionists. The exhibits are not all-inclusive but rather sampling. In order to police the various agreements, handle the grievances and time claims of the employees, and carry out its collective bargaining responsibilities on the Erie Lackawanna Railroad, the Brotherhood expends substantial sums of money. In the year 1965 these services cost the Brotherhood $113,683.41. In the year 1966 the Brotherhood expended the sum of $105,538.32, and for the first 3 months of 1967 the

[9] In a deposition, the Switchmen's Union claimed to have a contractual relationship on the subject of job protection in the event of coordination. This "stretched" conclusion arose from the fact that a national agreement was executed by all railroad unions in May of 1936 (commonly called the Washington Job Protection Agreement), which is still operative and in effect.

Brotherhood expended $30,898.84. In other words, in 27 months the Brotherhood expended a grand total of $250,120.57 for the benefit of the employees which it represents on the Erie Lackawanna Railroad.[10]

No money was received by the Brotherhood for this purpose from any source other than the dues paying members on the Erie Lackawanna Railroad, and neither the Switchmen's Union organization nor the Order of Railway Conductors and Brakemen organization, nor any of the employees who allegedly satisfy their union shop responsibilities by belonging to the Switchmen's Union and the Order of Railway Conductors and Brakemen, make any contributions to the Brotherhood or reimburse the Brotherhood for any of its expenses.[11]

The plaintiffs have given varying figures with respect to the number of employees whom the Brotherhood represents but who pay dues to these other two competing and dissident unions. A figure of 500 is mentioned in the complaint, but in sworn testimony the figure appears to be approximately 400[12] or less who pay dues to the Switchmen's Union of North America. It would seem that another 250 or 300 pay dues to the Order of Railway Conductors and Brakemen rather than the Brotherhood of Railroad Trainmen. It is my understanding that there are over 3000 employees in the crafts and classes represented by the Brotherhood of Railroad Trainmen. The higher dues structure of those men who pay dues to the Brotherhood of Railroad Train-

[10] Requests to Admit, Nos. N, O and P, dated May 23, 1967.

[11] Answers to Interrogatories, No. 15, by Switchmen's Union of North America.

[12] Deposition of General Chairman Mastronardi of Switchmen's Union (p. 16).

men reflects the cost of rendering services to the men who have joined the Switchmen's Union and the men who have joined the Order of Railway Conductors and Brakemen. The Order of Railway Conductors and Brakemen and the Switchmen's Union can profitably, and do, charge lower dues than is required of the Brotherhood members.[13] This variance in dues structure feeds on itself and induces employees to satisfy their union shop requirement by selecting the organization with the "cut-rate" dues structure, thereby exacerbating the inequity.

Furthermore, the grievance procedures on the Erie Lackawanna Railroad lend themselves to a facade of representation by the competing and dissident union which has no contract and no status with the carrier. This comes about by virtue of the fact that an employee having a grievance is entitled to be represented by any person of his choice. There is no requirement that he be represented in grievances by his duly authorized collective bargaining representative. He may utilize the services of someone who is a complete stranger to the contract, to the property, to the working conditions, and he has the right to use such an individual of his choice in appeals even to the ultimate compulsory arbitration tribunal in the railroad industry—the National Railroad Adjustment Board. The Switchmen's Union, therefore, maintains an organizational entity on the Erie Lackawanna Railroad with 15 officers strategically located on the system who will, and do from time to time, represent employees in grievance controversies involving the inter-

[13] As low as 50¢ local dues for Switchmen's Union (deposition of Mastronardi, p. 18). Over-all dues are about $48.00 less per year than the Brotherhood dues. Dues vary from local to local.

pretation of the Brotherhood's contracts with management.[14]

Furthermore, as unions national in scope and organized under the Railway Labor Act, each of these competing unions is entitled to, and does have, representatives on the National Railroad Adjustment Board, and on two or three occasions in national emergency situations both the Order of Railway Conductors and Brakemen and the Switchmen's Union of North America[15] have been party to highly publicized proceedings, thereby enhancing the impression that they are in some way involved in the collective bargaining procedures which the Brotherhood in fact carries on for all employees in the craft or classes on the Erie Lackawanna Railroad. This veneer of involvement impinges upon the intrinsic morality of the Brotherhood's pleas for the voluntary support to which it alone is entitled by virtue of its bargaining activities. Moreover, the true picture of the Brotherhood's comprehensive acts of representation can become muddied in the minds of employees. Instances of inter-union cooperation on the national level are few and exceptional.[16]

Furthermore, as an organized group of grandstand quarterbacks and critics, the competing unions are in the position to disseminate on an organized basis, and do disseminate on an organized basis, criticisms, second guesses, carping analysis and misrepresentation of the efforts of

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[14] See Answers to Interrogatories, No. 35, by Switchmen's Union, and deposition of Mastronardi, pp. 23-26.

[15] Like the fireman on diesel, and the crew-consist issues raised by the railroads nationally in their "Anti-Featherbedding Campaign", leading to Presidential study commissions, Presidential Emergency Boards, etc. in the Eisenhower and Kennedy Administrations.

[16] Deposition of Switchmen's Union, by Neil Speirs, p. 48.

the Brotherhood, thereby inevitably creating labor unrest and dissatisfaction on the carrier's property.[17]

In past years, when the Switchmen's Union felt that it had stirred up enough resentment against the Brotherhood it petitioned the National Mediation Board to obtain certification whereby it might replace the Brotherhood as the certified collective bargaining representative.

The General Adjustment Committee of the Switchmen's Union of North America meets once every 4 years. The membership of the Committee consists of the 15 officers on the property. They elect one of their number as General Chairman. Their fixed expenses aggregate $60.00 per month for a part-time secretary. Their officers are unpaid but receive the approximate equivalent of a day's pay on the railroad from the union when they are engaged in activities on behalf of the Switchmen's Union.[18] The Brotherhood, on the other hand, maintains 2 General Committees on the property, with full-time salaried General Chairman, full-time employees, and with such facilities and expenses as are necessitated by its collective bargaining responsibilities.

As I have heretofore indicated, union representation in the railroad industry is on a craft or class (of employees) basis.[19] There are approximately 23 unions who represent various crafts and classes of employees on the railroads

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[17] See supporting affidavits of officers of Brotherhood of Railroad Trainmen. See also Exhibit 12.

[18] Deposition of Switchmen's Union by Mastronardi; Answers to Interrogatories by Switchmen's Union, No. 29.

[19] This is true even when one union represents all crafts and classes employed by the entire railroad. (See Requests to Admit, Nos. H, I, J and K, of May 23, 1967). *Rohrer* v. *Connemaugh & Black Lick R. R.*, 359 F.2d 127 (3rd Cir., 1966)—United Steelworkers.

throughout the United States. All but 5 or 6 of these unions represent non-operating employees (commonly referred to as the "Non-Ops"). In the generally accepted usage there are 5 unions representing operating employees (sometimes referred to as the "Five Ops"). The 5 operating unions are sub-divided into 2 "Engine Service" unions (the Enginemen and Firemen) and the 3 "Train Service" unions. The 3 "Train Service" unions are the parties to this dispute. It is theoretically possible for 2 or even all 3 of these "Train Service" unions to have simultaneous collective-bargaining responsibility on a given railroad, each being a duly designated collective bargaining representative for a particular craft or class of "Train Service" employees. For example, the Brotherhood could be certified for Road and Passenger Brakemen, the Switchmen's Union for Yard employees, and the Order of Railway Conductors and Brakemen for Conductors.

The crucial fact with respect to the Erie Lackawanna Railroad, however, and the determinative fact in this proceeding, is that on the Erie Lackawanna Railroad the Brotherhood of Railroad Trainmen is the sole and exclusive collective bargaining representative for *all* the operating "Train Service" employees.[20] It is this single fact which, in my opinion, makes the union shop agreement which is under attack here legal and properly authorized by the Railway Labor Act. The plaintiffs have admitted that none of them, and no other members of the crafts or classes they assert to represent in this proceeding, hold employment rights with the Erie Lackawanna Railroad in any craft or class other than classifications which are

[20] Requests to Admit, No. 2 (a) to (g) inclusive, of May 23, 1967.

exclusively represented by the Brotherhood on the Erie Lackawanna Railroad.

It may be parenthetically observed at this time that the plaintiffs have also admitted that there has been no threat made to discharge any employee purported to be covered by the union shop agreements under attack, and that there have been no discharges pursuant to the union shop agreements under attack. The union shop agreement in question contains a number of procedures designed to protect individuals from wrongful discharge pursuant to its terms. The plaintiffs have agreed that not only has no individual been threatened or discharged—they have also agreed that no individual has invoked any of the procedures set forth in the agreement designed by the contracting parties for the protection of the individuals.[21]

Parallel union shop agreements to that under attack here have been negotiated on a number of other railroads and are in operation. Annexed to the Requests for Admission served by the Brotherhood on the plaintiffs on May 23, 1967, are copies of such agreements in effect on 7 other railroads.[22] One of these was attacked by the Switchmen's Union in the U.S. District Court in Chicago, and the Findings of Fact and Conclusions of Law leading to the dismissal after trial of the complaint in that case were filed with the Court as part of defendant's Requests for Admission under Rule 36 on June 7, 1967 [Items (D) and (E)]. The Requests for Admission under Rule 36 which were served and filed on May 23, 1967, have not been denied by the plaintiffs, and all such requests for admis-

[21] Requests to Admit, No. 2 (I), (J) and (K) inclusive, of May 23, 1967.

[22] Requests to Admit, No. 1 (a) to (g) inclusive, of May 23, 1967.

sion must be deemed as stipulated facts for the purposes of this motion.

THE PLEADINGS

After identifying the parties (¶ 1-7) and setting forth some irrelevant historical background (¶ 8-10), the complaint alleges the making of a collective bargaining agreement which is marked Exhibit A and made a part of the complaint. (¶ 11). The Brotherhood has admitted the making of the collective bargaining agreement,[11] but denies the truth of the balance of the allegations in an answer duly verified by W. J. Weil, its Vice President, on April 5, 1967.

It is alleged in Paragraph 11 that the bargaining agreemetn became effective immediately. This was not true, since the Railway Labor Act is a controlling instrumentality on the contract and its provisions are deemed to have been incorporated in the agreement. This agreement therefore was intended by the parties to become operative 60 days after its execution, in accordance with the Railway Labor Act. The written agreement need not and does not, by any means, contain all the terms and conditions of the agreement between the parties.

All of the provisions of the Railway Labor Act control the contract, whether or not the language of the Act is incorporated in the agreement in *haec verba*, and the language of the Railway Labor Act controls and is superimposed on the contract as implied terms thereof.

I will deal with Paragraph 12 of the complaint hereinafter in explaining why the defendant, Brotherhood of Rail-

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[11] Answer of Brotherhood, Paragraph 5.

road Trainmen, is moving for summary judgment upon the ground that there is no justiciable controversy.

In Paragraph 13 of the complaint the plaintiffs contend that the constitution of the Brotherhood will not permit them or other members of the Switchmen's Union to become and remain members of the Brotherhood.

The answer of the Brotherhood denies the interpretation placed upon the constitution of the Brotherhood by the plaintiffs. Furthermore, this allegation is entirely irrelevant to the question of whether or not the plaintiffs would suffer any injury if the injunction were vacated and the agreement was permitted to become operative. As I have heretofore shown to the Court there are fool-proof safeguards, both statutory and in the agreement, which completely protect members of the Switchmen's Union and members of the Order of Railway Conductors and Brakemen from being discharged by the Erie Lackawanna except for a refusal to "tender dues". Assuming that any Switchmen's Union member or O.R.C.&B. member were denied membership in the Brotherhood, he would lose no seniority, no job benefit, and would lose no employment right whatsoever. He would, in fact, gain the ultimate status of continuing as a "free rider" employee exempt from the requirement of paying dues to the Brotherhood.

Finally, the plaintiffs contend (¶ 14) that some of them carry group insurance with either the Equitable Life Assurance Society or with the Aetna Insurance Company and that they would lose these insurance rights if the agreement requiring them to join the Brotherhood is enforced. I have examined copies of the policies referred to in the Switchmen's complaint. The Equitable Life Assurance policy No. 16222 provides that on the termination of the

member's membership his spouse is entitled to have issued, without evidence of insurability and upon payment of premium applicable to the class of risk to which the spouse belongs, and individual policy of life insurance in any one of the forms then customarily issued by the Society in an amount equal to the amount of insurance with respect to the spouse under said group policy ceasing because of such termination.

I have also examined the Aetna Life Insurance policy, Group Policy No. T 47350, and have determined that upon termination of membership the member is entitled to have issued to him by the insurance company, without evidence of insurability, an individual policy in an amount equal to, or at the option of the member in an amount less than, a certain formula therein set forth.

In any event, whether or not a member purchases life insurance under either of these plans is entirely voluntary, optional with the employee, and in the context of this dispute and in the light of the conversion privileges and conversion requirements under the New York Insurance Law §§ 161(e) and 162(5) and (6) (since the policies are controlled by New York law), together with the availability of similar insurance from other sources, it is an abuse of terms to describe these as valuable "property rights".

Furthermore, these property rights need not be lost or placed in jeopardy. If any member determined that it was his desire to continue his group insurance and felt it reasonable to continue his membership in the Switchmen's Union for that purpose, or indeed for any purpose, such an employee could do so without fear or hindrance. The

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Brotherhood does not and cannot, as a practical matter, compel any individuals to cease to be members of the Switchmen's Union or any other union or association should they so desire.

It may be pertinent to observe that the attention of Congress was called to the possibility that insurance benefits might be lost as a result of the requirements of a union shop transfer, and it was taken for granted, probably because potential injury was thought negligible, that this effect could be borne without undue hardship. [Hearings before the Committee on Interstate and Foreign Commerce on H.R. 7789, 81st Cong. 2d Sess.; testimony of Daniel P. Loomis at p. 159]. But the allegation that the plaintiffs must lose insurance coverage is untrue in any event for the reasons stated above.

Paragraph 15 of the complaint falsely states that "The defendant ERIE LACKAWANNA RAILROAD COMPANY has threatened to discharge the individual plaintiffs and the members of the class they represent and each of them * * *." This essential paragraph of the complaint has been denied, and the Requests for Admission confirm the denial of these threats.[24]

Paragraph 17 of the complaint alleges:

> "The requirement that the plaintiff and the other members of the class they represent must join and maintain membership in the defendant BROTHERHOOD OF RAILROAD TRAINMEN as a condition of employment deprives said persons and each of them of the right to

[24] See details set forth in exposition of contention that there is no justiciable controversy, *infra*, p. 21 ff.

join and remain members of the union of their own choice."

This is not true. The requirement that the plaintiffs and other members of the class they represent in this litigation must join and maintain membership in the defendant, Brotherhood of Railroad Trainmen, as a condition of employment, permits the plaintiffs and the other members of the class they represent in this litigation to be free to join or remain members in any other union whatsoever. On the other hand, if these plaintiffs and any and all other employees similarly situated decide that they do not wish to pay dues to two unions then, of course, they are free to terminate their membership in the Switchmen's Union without jeopardizing any seniority, job benefit or employment right or privilege. But such a decision would be in in the same category, for the purposes of this litigation, as a decision whether or not to belong to the Knights of Columbus or the Elks or the Masons, who are also out of official status or contractual responsibility with the Erie Lackawanna Railroad. Membership in a union other than the Brotherhood is entirely a matter of free choice for the employee.

Paragraph 18 of the complaint alleges that the plaintiffs and each of the other members of the class they represent "has seniority rights entitling him to preferential employment by the defendant railroad which constitute valuable property rights which will be lost in the event of a discharge for failure to join and maintain membership in the defendant BROTHERHOOD OF RAILROAD TRAINMEN" as required by the agreement. Of course, if an employee were to be discharged from employment he would

lose his seniority. He would also lose his income and means of livelihood. His seniority is dependent solely and exclusively upon the date of his employment with the Erie Lackawanna Railroad Company; it has nothing to do with his continued membership in the Switchmen's Union of North America. Accordingly, his seniority will be unaffected by his joining the Brotherhood.

Since the plaintiffs have agreed, however, that no one has been discharged or threatened with a discharge, there is no property right placed in jeopardy by the execution of the agreement.[25]

Paragraph 19 of the complaint alleges that under Section 2 of the Railway Labor Act the defendant Erie Lackawanna Railroad Company may not interfere with or coerce employees from exercising their right to join and designate the Switchmen's Union as their representative. This allegation of the complaint is completely irrelevant to the controversy. The Erie Lackawanna Railroad has not interfered with or coerced the employees from exercising their right to join and designate the Switchmen's Union as their representative. All that they have done is to agree with the Brotherhood, in accordance with the authority of the Railway Labor Act, that the employees in the crafts and classes represented by the Brotherhood should join the Brotherhood and support its collective bargaining activities.

Paragraph 20 of the complaint alleges that membership of the plaintiff employees in the Switchmen's Union constitutes a valuable contract and property right of each of the plaintiffs. This is denied; the Switchmen's Union of

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[25] See discussion regarding absence of justiciable controversy, *infra*, p. 21 ff.

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North America is an unincorporated association. Paragraph 20 goes on to allege that the conduct of the defendants has unlawfully interfered with such contract or property rights. This simply is not true. The defendant Brotherhood has done nothing whatsoever to interfere with the freedom of association of any of the employees whom it represents. It only asks that in addition to other interests which the employees may support, they also support the work that is carried on for their benefit by the Brotherhood.

Paragraph 21 of the complaint alleges that "The conduct of the defendants and each of them has caused and threatens to cause each of the plaintiffs and each of the members of the class they represent irreparable injury for which no remedy in damages is available." This paragraph is denied and there is absolutely no factual basis to support the allegations of irreparable injury. In fact, the admissions in this case make it crystal clear that there is no injury or threat of injury to any of the plaintiffs.[26]

Paragraph 22 of the complaint (denied by defendants) alleges damages to the Switchmen's Union; that claim has been withdrawn.

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[26] See footnotes 24 and 25.

[27] Under Section 2, Fourth (45 U.S.C. 102, Fourth), carriers are prohibited from coercing employees to join a union.

Under Section 2, Fifth (45 U.S.C. 102, Fifth), it is unlawful for a carrier to have an employee sign an agreement promising to join a union.

These prohibitions were relaxed by the 1951 Amendment authorizing the union shop. However, should a carrier compel an unauthorized form of union security agreement it would be subject to the criminal penalties provided in Section 2, Tenth (45 U.S.C. 102, Tenth).

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The complaint of the intervening plaintiffs is in all respects an adaptation of the complaint filed on behalf of the members of the Switchmen's Union, and rather than repeat and extend the analysis of that complaint I allege that the factual contentions of the Brotherhood of Railroad Trainmen apply with equal vitality to rebut the contentions in the complaint filed on behalf of the intervening plaintiffs.

THERE IS NO JUSTICIABLE CONTROVERSY

The Notice of Motion for summary judgment and the affidavit of Alan F. Perl, sworn to the 7th day of June, 1967, withdraws any claim of damage on the part of the Switchmen's Union of North America. He admits (page 4, last paragraph): "There is no need to resolve the question of plaintiffs' original claim for damages since the temporary injunction was granted and no damages have accrued". It is to be noted that the Switchmen's Union does not allege any damage to itself as an unincorporated association in the original complaint and does not purport to have any interest in the demand for injunctive relief and for a declaratory judgment in its capacity as a labor union. It only seeks to prevent "irreparable injury" to the employees which it represents and the individual plaintiffs. What is the damage and the injury which the plaintiffs seek to avoid?

The plaintiffs allege in Paragraph 11:

> "The defendants BROTHERHOOD OF RAILROAD TRAINMEN and ERIE LACKAWANNA RAILROAD COMPANY have threatened and are threatening to discharge the plaintiff JOHN P. O'CONNELL, R. A. GALLO and CHARLES DOYLE

and all the other members of the plaintiff SWITCHMEN'S UNION who are employed by defendant railroad unless they cease to be members of the plaintiff SWITCHMEN'S UNION and become and remain members of the defendant BROTHERHOOD OF RAILROAD TRAINMEN."

The Brotherhood in its Answer denies this allegation. Moreover, on or about May 23, 1967 the Brotherhood served Requests for Admission under Rule 36. The following 3 allegations were admitted to be true by the plaintiffs' failure to deny:

"(I) That there have been no discharges by the Erie Lackawanna Railroad pursuant to the union shop agreements of March 14, 1967 (Eastern District) and April 4, 1967 (Western District)."

"(J) That there has been no threat made to discharge any employee purported to be covered by the union shop agreements dated March 14, 1967 and April 4, 1967, by the Erie Lackawanna Railroad Company."

"(K) That no individual has invoked any of the procedures contained in the union shop agreements annexed to the complaint."

In the absence of any discharges or threats to discharge the individual plaintiffs or any members of the class which they represent, and in light of the facts hereinbefore informing the Court of the irrelevance of plaintiffs' claims regarding loss of seniority and job benefits and of the insurance conversion privileges of plaintiffs, no injury or imminent harm is made out by plaintiffs. Therefore,

plaintiffs do not have standing to raise the issue of the legality of the union shop contract involved here. There is no justiciable controversy.

The Court is merely being asked for an advisory opinion, and Judge Herlands, by writing a lengthy opinion regarding his interpretation of Section 2, Eleventh (c) of the Railway Labor Act has, in fact, opened the doors of the Federal courthouse to similar challenges by railroad employees who may seek to avoid any risk and obtain advice in advance that it is satisfactory for them to pay dues to other unions than those authorized by the National Mediation Board to represent them as collective bargaining agents.

Criminal Intent to Violate Railway Labor Act Cannot be Presumed

In a companion set of papers the Brotherhood is moving for summary judgment dismissing the complaints. In support of that motion we are showing to the Court that the union shop agreement which is set forth in the complaint, and admittedly executed by the Erie Lackawanna Railroad and the Brotherhood, does not constitute the entire agreement between the parties. Both the Erie Lackawanna Railroad and the Brotherhood operate under the Railway Labor Act and are issues of fact based on these affidavits, I respectfully direct the Court's attention to the following facts with respect to the legislative history of the changes in the Railway Labor Act authorizing union shops. These facts, I believe, establish the propriety in operation of the union shop contract which was entered into between the Erie Lackawanna Railroad Company and the Brotherhood and which the plaintiffs attack.

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The legislation originally introduced was designed to permit the unions on the railroads to bargain for union shops in the same manner as was permitted in industries generally following the enactment of the Taft-Hartley Act.[21] The Senate Bill introduced to accomplish that purpose was S. 3295. The companion Bill in the House of Representatives was H.R. 7789. The Senate hearings were conducted in May of 1950. The hearings in the House were conducted in May, 1950 and were concluded on June 7, 1950.

The principal spokesman for the Bill in both Houses was George M. Harrison, who represented 21 standard railway labor organizations. Much of Mr. Harrison's testimony before Congress dealt with the purposes of the proposed amendments. In his testimony he dealt in part with the public's interest in the Railway Labor Act in general, and with the union shop provisions in particular. He emphasized that under the Act a moral duty was imposed on an employee to "exercise his right to participate in the selection of his representative and then bow to majority rule and participate in the collective action through support of the union which represents him." [House hearings, p. 9.] • • • "Under the Act the collective-bargaining representative is required to represent all of the members of the craft or class which it represents fairly and equitably, and without regard to membership or nonmembership in the union." [supra] He said (p. 10):

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[21] Labor-Management Relations Act of 1947, 29 U.S.C. 151, 158(a)(3), 159(a).

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PURPOSES OF UNION SHOP—FAIRNESS*

"Activities of labor organizations resulting in the procurement of employee benefits are costly, and the only source of funds with which to carry on these activities is the dues received from members of the organization. We believe that it is essentially unfair for nonmembers to participate in the benefits of those activities without contributing anything to the cost. This is especially true when the collective bargaining representative is one from whose existence and activities he derives most important benefits and one which is obligated by law to extend these advantages to him. * * *

PUBLIC INTEREST

"The public also has a great interest in having all members of the bargaining unit participate in the formulation of bargaining policies of the organization. If all members of the craft or class participate, the bargain reached with the employer is most likely to reflect interests and desires of the group as a whole. * * * On the other hand, if only 51 percent of the bargaining unit are members, the policies of the craft or class can be determined by only 26 percent of the group. * * *

MORALE OF EMPLOYEES

"The morale of employees will eventually be improved if all employees participate in the bargaining process. There will be less complaint about the negotiation of contracts and the handling of grievances by the organizations to which they do not belong. Representation

* Headnotes not part of Harrison testimony.

disputes should be reduced under union shop conditions." (P. 11) "The employer has more assurance that his contract, once made, meets with the approval of a greater number of his employees.

REDUCTION OF GRIEVANCES AND ELIMINATION OF GRIEVANCE PROCEDURE AS BATTLEGROUND FOR RIVAL UNIONS

"There will be a more uniform approach in the application of the rules. Individual employees will be more inclined to have grievances handled by their representatives rather than to handle them themselves. Fewer disputes will be processed because the union will be in a better position to reject unsound claims. This should result in a substantial reduction in court cases and cases submitted to the National Railroad Adjustment Board. The grievance procedure will cease to be a battleground for rival unions.

ELIMINATION OF UNNECESSARY CONTROVERSIES

"It is axiomatic that union members resent having to work side by side with 'free riders' who are enjoying benefits procured by the money, time, and effort of union employees, and who at the same time are apt to be critical of union policies. There is no question that this condition tends to result in a lowering of morale, and I can say from experience that it results in many unnecessary disputes and controversies.

ELIMINATION OF RAIDING AND CARPING CRITICISM

"The union shop makes it more difficult for one union to raid another and thus eliminates or reduces weeks

and months of turmoil among employees in the involved group. Employees who participate, through membership, in the formulation of their own wages, rules, and working conditions will be much less susceptible to irresponsible appeals and unjustified criticism of rival unions.

"Where all employees are members of the union, it is just as easy to change the policies of their organization through the democratic process available to them as it is to change the collective bargaining representative.

IMPROVED DISCIPLINE OVER SUB-STANDARD WORK PERFORMANCE

"Unions have been criticized for lack of responsibility. In the absence of disciplinary power over individual employees which the union shop gives, the union is seriously handicapped in preventing, unauthorized work stoppages, poor workmanship, lack of efficiency, and other conduct which is the frequent source of management complaints. This is particularly true in the railroad industry where operations are widely scattered and supervision made difficult."

Other witnesses testified with respect to the general purposes of the union shop in the railroad industry and what it was thought might be accomplished by the enactment of such legislation for both the general public and the union. William Grogan, representing the Transport Workers Union, explained to the House Committee on Interstate and Foreign Commerce (p. 28):

"It is also a fact under open-shop conditions there is a demand on union leadership forever asking improve-

ments in wages and working conditions without regard to their practicability or even their possibility of achievement. The union has to bid for membership and it is forced into a perpetual war with the employer to retain that full membership which a union requires to be effective. * * *"

Management witnesses testified both in the House and the Senate to support an open shop. But Mr. Harrison testified (p. 249):

"As a practical matter, however, the fact that all of the members of a craft or class may be required to join a union as a condition of employment will do much to discourage raiding by other labor organizations. The rivalry between unions will be decreased rather than increased by reason of the fact that the class or craft will be fully organized and all of its members will belong to the organization representing the members of such class or craft."

Similar testimony was given before the Senate.

It is crystal clear that the main purpose of the legislation was to give railroads and the unions representing employees on the railroads the benefit of the parallel provisions of the Taft-Hartley Act. [96 Cong. Rec., Senate, September 23, 1950, p. 15736; December 7, 1950, p. 16268]. On January 1, 1951 Congressman Biemiller said (96 Cong. Rec., House, 17055):

"Those of you who voted for the Taft-Hartley Law have voted for a similar provision for industry. * * * The rest of American industry nationwide has accepted the

provision of the union shop. That issue is not debated any more in labor-management circles. • • •

All you are being asked to do is to okay a provision that gives to railway labor the right to bargain for the union shop just as any other labor group in the country may do. • • • But actually there is one simple issue before the House of Representatives today and that is, are we going to give to railway labor the same right to bargain for a union shop that we have given to labor in industries throughout the United States?"

And then—Congressman Hugh D. Scott, speaking thereafter, said (p. 17055):

"The Labor-Management Act of 1947 is the law of the land. In the interest of consistency and as the result of the enactment of that Act and of the natural desire of other labor organizations to enjoy some of its benefits, we are faced with the responsibility of seeing to it that the law works and that it is properly extended under legislative conditions as this Bill proposes.

The Bill that we are now considering extends to the railroad workers and employees of common carriers by air a great principle embodied in the Taft-Hartley Act. It has extended such benefits to much of the Nation's labor population in the Taft-Hartley Act. • • • It will promote peaceful solutions and stability of relationship between labor and management in the industries concerned. I am satisfied that that is the purpose, and that that will be the effect of the Bill. It is not radical; it is common justice."

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Other Congressmen who discussed the Bill drew corresponding parallels [Congressman Crawford, p. 17056; Congressman Bennett, p. 17056; Congressman Heselton, p. 17056; Congressman Crosser, p. 17056, 17057; Congressman Sullivan, p. 17057; Congressman McGuire, p. 17057]; and similar thoughts were echoed in the earlier Senate debates by floor-manager Senator Lister Hill, p. 15736, 16261.

Congressman Linehan's remarks in support of the legislation on January 1, 1951 are worthy of repetition in connection with the instant litigation. He said (p. 17058):

> "It [the union shop] reflects the American spirit of fair play. It provides that those who accept the benefits secured by an organization shall also share equally in the expense of operating such organization.
>
> 'Free riders'—those who seek to get something for nothing are resented in every walk of life, and justly so. We all believe no man should shirk his responsibilities. None among us will deny that all who benefit from the services provided by organized society, through government, should help pay the cost of government. Why should not the same principle apply to workers who secure the benefits of trade unionism? * * * This measure is the very essence of democracy. It encourages 100% membership and 100% participation in the activities of a union. Thereby the policies formulated by a union will more truly reflect the wishes of the great majority.
>
> This Bill will also enhance peace on the rails. It will remove a major source of irritation and unrest. As I said earlier, railroad workers who regularly and loyally tender their dues to support their unions resent the

'free riders' in their midst—the men who take the gains which unions win through long and costly struggles, but refuse to pay one penny toward the expense involved.

Such a situation creates friction. It makes for hard feelings. It lowers morale. It affects output and productivity. Without question, correction of such situations will raise morale and make for greater productivity. Under the union shop, workers will be pulling together. Each man will be bearing his proper share of the load. This should undoubtedly result in improved productivity and greater harmony which will be equally beneficial to the employees, the management and the public. * * * Certainly collective bargaining can function more effectively if the union voices the sentiments of all the employees and if it is supported by all the employees.

The union shop is an old established American institution. It has existed in many industries for decades and has made for stability. It is welcomed by many employers as an aid to discipline and efficiency in the shop. Fair employers who operated under union-shop conditions would frankly declare they would never go back to the irresponsibility and the confusion of the open-shop."

While the Court may feel that I have dwelt unduly on what perhaps was obvious, I have done so because the interpretation of the union shop provision which is urged by the plaintiffs in this case would defeat substantially all of the advantages which Congress believed it was legislatively making allowance for, to the benefit of the public generally, the railroad industry, and the railroad unions.

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If a union which is a legal stranger to a particular railroad can, by virtue of the fact that it is organized under the Railway Labor Act and is national in scope, siphon off dues to finance a perpetual battle for representation rights, then all of the salutary effects that I have discussed may be effectively negated. It seems evident, and irrefutably evident, that this was never the intention of Congress in authorizing alternative union shop membership for employees in the operating unions. The grant of the preliminary injunction below reflects a kind of myopia which, in looking at the trees, completely misses the forest. The general remedial purpose of the legislation authorizing the union shop has been wholly obscured and overlooked as a consequence of viewing the Railway Labor Act amendment to Section 2 "in a vacuum"—a practice which the Supreme Court in *Rychlik* warned against. See *Pennsylvania R. Co.* v. *Rychlik*, 352 U.S. 480 (1957).

Section 2, Eleventh (c) provides as follows (brackets supplied):

> ["The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied,* as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one

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[* nothing requires this alternative to be expressed in the written contract.]

of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services]; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership; *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services."

It is the absence of the language in brackets in the union shop agreement on the Erie Lackawanna Railroad which produces this controversy.

In order that the Court will not be misled, the omission from the written documents entered into between the Erie Lackawanna and the Brotherhood was meaningful and not an oversight by the parties. The critical question I propose to answer is why the parties omitted the provision

from their written contract. The short answer is that there was in existence no practical or realistic reason for including such a provision for alternative union membership in the written contract since the Brotherhood of Railroad Trainmen now holds, and always has held, all of the collective bargaining agreements for all "Train Service" employees on the Erie Lackawanna Railroad. Under these circumstances, there is no situation which could arise on the Erie Lackawanna Railroad in which alternative union membership could be authorized or proper as I view the legislation and its purpose.

In order to fully understand the significance of the foregoing statement, it is necessary to examine the legislative history to determine the purpose behind permitting the variation on the authorization of strict union shop membership for employees in the operating crafts of the railroad industry. In examining the legislative history in this regard, it is necessary to bear in mind that the question is one of alternatives, and that these alternatives are as follows:

1. Did Congress intend to dilute the effectiveness of the union shop provision for the operating crafts by authorizing enclaves of minority unions to actively compete for the loyalty and support of the duly authorized collective bargaining representative—thereby practically liquidating all of the salutary advantages of the union shop requirement?; or

2. Did Congress intend merely to avoid compulsory dual unionism on those railroads where more than one operating union was the duly authorized collective bargaining representative and in precisely those

> situations where the requirements of intercraft mobility would make it necessary for an employee to occasionally and temporarily change from one operating craft to another operating craft?

I firmly believe that Congress intended the second alternative and that when the Act speaks of alternative union membership the alternative union must be one which is not only national in scope and organized in accordance with the Railway Labor Act, but ALSO A UNION WHICH IS A DULY AUTHORIZED REPRESENTATIVE FOR SOME CLASS OR CRAFT OF EMPLOYEES ON THE PARTICULAR RAILROAD INVOLVED. Indeed, as Congressman McGuire explained to his colleagues (p. 17058):

> "The bill now before the House, S. 3295, is substantially identical to the bill reported by our Committee, the only difference being language agreed to by the railway labor organizations themselves, for the purpose of clarifying the section dealing with union membership requirements, where employees hold rights in more than one class or craft, *and where different organizations hold the bargaining rights in such crafts or classes.*" (Emphasis added)

So that the legislative history may not be analyzed in a vacuum but can be understood in terms of the situation which prevails in the present case, there are approximately 65 Eastern railroads in the United States.[29] Each of these railroads has collective bargaining agreements with operating craft unions. The plaintiff, Switchmen's Union of North

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[29] Railroads represented by the Eastern Carriers Conference Committee.

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America, has contracts representing a craft on only 2 of these Eastern railroads, to wit: the Buffalo Creek Railroad [5.66 miles] and the Indianapolis Union Ry. Co. [15.88 miles].[30] These are 2 short lines, and the number of employees represented by the Switchmen's Union on these 2 railroads is a fractional percentage of "Train Service" employees on the Eastern railroads.

The question is, did Congress intend that the Switchmen's Union, simply because it is organized under the Railway Labor Act and is national in scope, could charge and collect cut-rate dues and thereby satisfy union shop requirements for operating employees on the remaining 63 railroads with whom it has no official or contractual basis? There is nothing in the legislative history to support the theory that Congress intended to confer this kind of a lucrative franchise on any of the operating unions. The purpose of the legislation throughout appears to have been moral and rational rather than immoral and nonsensical.

Furthermore, as the legislative history is reviewed it becomes quite evident that the draftsmen believed it an unnecessary redundancy to declare in Section 2, Eleventh (c) that in order to qualify for alternative union membership a third unexpressed qualification was necessary, to wit: that the alternative union be one duly certified by the National Mediation Board to represent a class or craft of employees in bargaining with the particular employing carrier.

From the inception of the legislative history the Bills which were introduced authorized a straight union shop contract and there was nothing therein contained which would permit an employee to satisfy the union shop re-

[30] Deposition of Switchmen's Union by Neil Speirs, p. 9.

quirement by belonging to any union other than his duly authorized collective bargaining agent. These Bills were supported by 21 of the 23 standard railway labor organizations. The only two who did not support the legislation in its original form were the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Engineers [House Hearings, p. 6.]

The bulk of the testimony, except for opposition by management representatives to the principle of the legislation, was directed toward discussion of the "safeguard" provision against union discrimination and toward improving the language. The concern was to make certain that all contingencies were protected against, and that all groups of employees were adequately protected from the discriminatory language contained in the constitutions of some of the Brotherhoods and the discriminatory practices of which some of the Brotherhoods were accused. It was as a result of these hearings that the absolute "safeguard" heretofore referred to was redrafted, permitting members of the Switchmen's Union and the O.R.C. & B. to maintain their membership in any union without fear of economic reprisal by the Brotherhood and regardless of any prohibitive constitutional provision as referred to in the complaint of the plaintiffs herein.

It was the Brotherhood of Railroad Trainmen who called the attention of Congress to the possibility of compulsory dual unionism, in the context of a situation of job mobility peculiar to the railroad industry, which might result from the straight union shop provision [House Hearings, p. 29; Senate Hearings, p. 65]. The problem that was raised was perhaps best described by Mr. Justice Harlan in his opinion

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in *Pennsylvania R. Co.* v. *Rychlik*, 352 U.S. 480. 77 S. Ct. 421. He said (p. 490):

> "Yet seasonal and other factors produce a high degree of job mobility for individual employees in the industry, that is, of shuttling back and forth between crafts. For example, a fireman may be *temporarily* promoted to engineer *for a short time*, or a conductor might have to serve *temporarily* as brakeman. Under the ordinary union-shop contract, such a change from craft to craft, even though *temporary*, would mean that the employee would either have to belong to two unions—one representing each of his crafts—or would have to shuttle between unions as he shuttles between jobs. • • •
>
> So Congress faced the problem of reconciling the union shop with some protection to employees who shifted from one craft to another one represented by *a different labor organization under a union-shop contract.* The solution, of course, was evident: to provide that if a fireman, for example, is *temporarily* promoted to engineer, he can satisfy the union-shop contract of the engineers although still remaining a member of the union representing the firemen. • • • "[11]

When the problem that was first noted by the Brotherhood of Railroad Trainmen was called to the attention of Mr. Harrison by Congressman Hinshaw, he pointed out (p. 78) that the intention of the 21 organizations had been originally to permit the unions to negotiate about that question with railway management. But, he said:

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[11] All italics in quotations hereinafter are supplied by me for emphasis.

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"I think on that, we could get together with the trainmen on some workable reasonable plan, and we will be glad to try to do that, and give the committee the benefit of our labors. I think it is a *practical* question and as reasonable men we ought to be able to work it out."

Later on Mr. Harrison returned to the hearings and testified with respect to his progress on the problem that the Brotherhood had raised. He said (pp. 259, 260):

"• • • we had a meeting of the so-called union heads in Washington on Wednesday and Thursday of this week to try to get them together on a solution of the problem that Congressman Hinshaw calls to our attention, and while they made considerable progress they have not as yet reached a definite conclusion. I think, however, that we will find an answer to that problem, and we will give it to the committee.

Now, let me make it clear that we have no intention whatever of forcing any employee to belong to two different unions just because he *temporarily*, because of fluctuations in business, moves from *one labor agreement to another labor agreement* in the exercise of his seniority rights. Let me make that clear in the record, so there will not be any question about it if you approve this bill."

Apparently no agreement was reached among the operating unions, and on August 7, 1950 the Committee on Interstate and Foreign Commerce reported the Bill favorably to the House of Representatives (Report No. 2811, 81st Cong.

2d Sess.) as a straight union shop authorization. The Report stated (p. 5):

> "Subparagraph (a) authorizes agreements requiring as a condition of employment, that employees be members of the 'labor organization representing their craft or class'. During committee consideration of the bill questions were raised as to the status of employees who are *temporarily* promoted or demoted from one closely related craft or class to another. While, under the authority granted by the bill, no single agreement could require membership in more than one union it was contended that as a practical matter this result might follow from two or more agreements between carriers and labor organizations, and furthermore, that some employees might, in order to retain certain union benefits, feel obliged to be members of more than one union. The committee decided that these questions should be resolved by negotiation and collective bargaining."

Similarly, the Report to the Senate (Report No. 2262, 81st Cong. 2d Sess.) provided for a straight union shop authorization. That Report made no reference whatever to the problem of intercraft mobility, thereby apparently adopting the same view as the House, viz.: that the problem could be resolved by contract. It is significant, as bearing on the intent of Congress to have the union shop applicable to the railroad industry, that the only reservation in the Report was expressed in the following language:

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"SUPPLEMENTAL VIEWS OF SENATORS TAFT, SMITH OF NEW JERSEY, AND DONNELL.

We reserve the right to introduce and support on the floor any and all amendments, including amendments which would cause the union shop and check-off conditions of employees of industry covered by the Railway Labor Act to be in general accord with the union shop and check-off conditions of employees of other industry."

Senator Lister Hill, who was a member of the Committee on Labor and Public Welfare, was the spokesman for the Bill on the floor of the Senate. On September 23, 1950, in legislative session, the Senate resumed consideration of S.3295 (96 Cong. Rec. 15737). Senator Hill explained that the Bill was "intended to extend to employees and employers subject to the Railway Labor Act, the right, now possessed by employees and employers in industry generally, to bargain collectively with respect to the union shop and check-off." Senator Hill then referred to the reservation by Senators Taft, Donnell and Smith and said:

"Since the report of the bill by unanimous action of the committee, these amendments have been worked out, they have been agreed upon, and on behalf of the senior Senator from Ohio and myself, I have offered the amendments."

So far as is pertinent here the amendment to the union shop authorization proposal thus offered read as follows (96 Cong. Rec. 15737):

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"Provided, further, that no such agreement shall require membership in more than one labor organization."

In explaining this particular amendment Senator Hill said (p. 15736):

"This proviso was attached because some question was raised as to the status, under this bill, of employees who are *temporarily* promoted or demoted from one closely related craft or class to another. This practice, with minor exceptions, occurs only among the train-engine-service employees. Thus a fireman may be promoted to a position as engineer *for a short time* and then due to a reduction in force be returned to his former position as fireman. It is the intention of this proviso to assure that in the case of such promotion or demotion, as the case may be, the employee involved shall not be deprived of his employment because of his failure or refusal to join the union representing the craft or class in which he is located *if he retains his membership in the union representing the craft or class from which he has been transferred.*"

No action was taken on this proposed amendment. However, on December 7, 1950 (96 Cong. Rec. 16268) the present language contained in Section 2, Eleventh (c), providing that the requirement of membership under a union shop contract is satisfied if the employee belongs to any one of the labor organizations national in scope organized in accordance with the Railway Labor Act, was offered.

These amendments were the amendments that had been promised by Mr. Harrison in his earlier testimony. Senator Hill said (16268):

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"Mr. President, these amendments are the amendments agreed upon by the railroad brotherhoods. They are the amendments to which I alluded earlier. With their adoption the railroad brotherhoods urge the passage of the bill.

The amendments do nothing more nor less than what the committee desires to do, and what was the intent of the committee in offering its amendment, that no employee of a railroad should be required to belong to more than one labor organization. The only difference between the committee amendment and the amendments now before the Senate, which have been agreed upon by all the railroad organizations, is that the amendments now before the Senate spell out in much more detail the purposes of the committee amendment than did the committee amendment. *But the intent and the purpose of the committee amendments and the amendments now before the Senate are exactly the same.*"

The amendments were then agreed to, whereupon Senator Hill, upon request, explained the extent to which the amendments constituted a variance from the Taft-Hartley Law provisions, and he said (16268):

"What the amendments do is simply to spell out the one proposition that no employee of a railroad shall be required to belong to more than one union. The Senator realizes that in an operating union a man may be a brakeman today and may be promoted to a conductor tomorrow, and he may be a conductor for *30, 60 or 90 days,* and then he may be dropped back to be a brakeman again. He might be a fireman to-

day; but tomorrow he might be promoted to be an engineer. He might then serve for *90 days or 120 days* as an engineer, and then he might be demoted to fireman. In the railroad industry there is a peculiar situation which perhaps does not exist in any other industry. The only purpose of the amendment is to make sure that a person employed by one of the railroads does not have to belong to more than one union."

Following this explanation, questioning ensued. Senators wanted to make sure that the union shop was preserved, and Senator Wherry specifically inquired, after referring to the amendment (16328):

"I have read that amendment as a premise to my question, which is as follows: If this measure is enacted, will it give to employers and employees the right, by means of collective bargaining, to set up a union-shop agreement?"

To this question Senator Holland replied in the affirmative. And to emphasize the point Senator Wherry pursued:

"If that is done, will there be a mandatory provision that a person who today might not be a member of such an organization, will be forced into one union organization?"

Senator Holland stated:

"All I can state is my personal understanding, which is that such a person will be forced into the organization which at that time represents that particular class or craft of employees."

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Senator Holland then yielded to Senator Hill, who confirmed Senator Holland as follows:

> "Mr. President, I would say that if the bargaining unit representing a particular employee arrived at an agreement with management, under which in that particular craft there was to be a union shop, the employee would be required to join the union."

Later, Senator Hill explained that by virtue of the amendment the employee was also free, should he so desire, to change organizations from one to the other and then back again if he desired to do so at the time that his craft changed (p. 16329). But, he said, *"He would have to belong to one or the other of those two organizations"* [meaning one of the organizations representing a craft involved in the shuttling operation].

Further debate made it clear that the proposed amendment was satisfactory to the Brotherhood of Railroad Trainmen and that the only organization not supporting the legislation was the Brotherhood of Locomotive Engineers.

I fail to find any suggestion in the legislative history that by defining the alternative union which could satisfy the requirement of union shop membership to mean unions that were national in scope and organized under the Railway Labor Act, Congress thereby intended to confer the extraordinary special benefit of dues-siphoning on these five unions, which follows from the interpretation placed on the legislation by Judge Herlands and by the plaintiffs in this action. To repeat, the sole purpose of permitting alternative union membership was narrow, specific and practical, to wit: to avoid the necessity of compulsory dual

membership where employes shuttled back and forth from crafts represented by different collective bargaining agents on a particular railroad.

In the light of the clear purpose of that legislative history there was no need for the Erie Lackawanna and the Brotherhood to incorporate in the contracts in *haec verba* the language of Section 2, Eleventh (c). The language is not statutorily mandated as is the "safeguard" provision. The practical reason was absent since no union other than the Brotherhood holds a contract with the Erie Lackawanna Railroad Company for "Train Service" employees.

Should another union at some future time be certified by the National Mediation Board as a collective bargaining agent for any of the crafts or classes now represented by the Brotherhood, then the problem of intercraft mobility would, in fact, arise and the contract would, of necessity, need to be interpreted as though the alternative union shop provision was incorporated in the agreement *in extenso,* or it could be redrawn at that time, if the parties so choose. For in the light of such a development, an employee could lawfully satisfy his union shop requirement by belonging to either of the "Train Service" unions certified as collective bargaining representatives on the Erie Lackawanna Railroad by the National Mediation Board.

Even assuming then that there is a justiciable controversy, and even if the Court does not grant defendants' motion for summary judgment upon the ground that there is no legal requirement for the contracting parties to express their full agreement in writing and that the contract is therefore entitled to the presumption of legality, I respectfully submit that the motion of the plaintiffs for

summary judgment should in any event be denied. The plaintiffs must be required to submit evidence in support of their complaint and, in fact, the defendants are entitled to prove, if need be, that they have not violated the Railway Labor Act by entering into the union shop agreement, the legality of which is herein assailed.[32]

Incorporated by reference in order to meet the evidentiary requirements of Rule 56 are the following documents:

1. Requests for Admission, dated May 23, 1967.
2. Requests for Admission, dated June 6, 1967.
3. Interrogatories, dated May 19, 1967, addressed to the Switchmen's Union.
4. Answers to Interrogatories by the Switchmen's Union, verified June 16, 1967.
5. Interrogatories, dated June 13, 1967, addressed to Order of Railway Conductors and Brakemen, answers to which have not as yet been received.
6. Transcript of the depositions of the Switchmen's Union of North America by Vincent Mastronardi, Chairman of the General Adjustment Committee of employees on the Erie Lackawanna Railroad, and transcript of deposition of Neil Speirs, President of the Switchmen's Union of North America.

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[32] Judge Herlands' opinion granting the injunction *pende lite* contemplated a further hearing and/or trial. This would militate against granting the plaintiffs' motion for summary judgment since nothing has been added to the papers before Judge Herlands. It does not impinge upon the defendants' motion for summary judgment, which is based on evidence establishing that there is no justiciable controversy and no illegality as a matter of law.

Affidavit of Arnold B. Elkind in Opposition to Plaintiffs' Motion

As one further item, the defendants have cross-claimed against the Switchmen's Union for money damages based on an alleged libel. To this the Switchmen's Union has pleaded, among other things, the arbitration provisions of the AFL-CIO constitution, to which both parties belong. Because of that plea, the Brotherhood has authorized me to consent to the entry of an order directing that the counterclaim be arbitrated in accordance with the provisions of the constitution of the AFL-CIO, and upon the entry of such an order will agree to a dismissal without prejudice of its counterclaim against the Switchmen's Union.

WHEREFORE, your deponent respectfully prays that the plaintiffs' motion for summary judgment be denied, and urges the Court to also refer to this affidavit in support of defendants' motion for summary judgment.

ARNOLD ELKIND

(Sworn to June 21, 1967)

"Annexed to the affidavit of Arnold B. Elkind in opposition to plaintiffs' motion were 12 exhibits. The exhibits numbered 1 through 11 are briefly described as follows (Exhibit 12 is printed):

Exhibit 1 contained references to a number of Notices for changes in rules, pursuant to Section 6 of the Railway Labor Act.

Exhibits 2 through 11 were copies of agreements between the Brotherhood of Railroad Trainmen and the Erie Lackawanna Railroad."

(R. 563-588)

Affidavit of Clifford D. Hawley in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

CLIFFORD D. HAWLEY, being duly sworn, deposes and says:

I am an attorney-at-law, having been admitted to the Bar of the State of Florida in 1930, and am a member of the Brotherhood of Railroad Trainmen.

I have been associated with the Brotherhood of Railroad Trainmen in Cleveland, Ohio, since 1930, serving as an Assistant General Counsel. For the past 4 years the position of General Counsel has been vacant and I have been performing the duties of General Counsel.

I am familiar with the constitution of the Brotherhood of Railroad Trainmen, having advised the officers of the Brotherhood of Railroad Trainmen with respect thereto for many years.

In my capacity, any Grand Lodge proceedings that are brought to enforce expulsion of members in accordance with Section 132 of the constitution would come to my attention.

To my knowledge, no member of the Brotherhood has been expelled for having membership in another labor

organization for more than 20 years, and certainly there has been no such expulsion since prior to the adoption of the 1951 Amendment to the Railway Labor Act authorizing the union shop. This provision is simply one of these archaic provisions that are carried, like many archaic laws, and is simply not utilized in spite of the fact that we know of a substantial number of members of the Brotherhood of Railroad Trainmen who carry membership in other labor organizations, some of which compete with the Brotherhood for representation rights. Membership in other labor organizations is a matter of complete indifference to the Brotherhood as a matter of official policy.

CLIFFORD D. HAWLEY

(Sworn to June 22, 1967)

Affidavit of Cyril P. Buser in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

CYRIL P. BUSER, being duly sworn, deposes and says:

I am employed by the Erie Lackawanna Railroad Company, having been originally employed by the Erie Railroad Company on September 30, 1950. I reside at 3106 Hadley Avenue, Youngstown, Ohio.

At the present time I am the Treasurer of Local Lodge 952 of the Brotherhood of Railroad Trainmen in Youngstown, Ohio.

Prior to joining the Brotherhood of Railroad Trainmen I was a member of the Switchmen's Union of North America, and in 1953 I was the Treasurer of Local Lodge No. 370 of the Switchmen's Union of North America in Youngstown, Ohio.

I am making this affidavit to indicate to the Court the method that is employed by the Switchmen's Union of North America to gain dues paying members as a result of the existing union shop agreement in effect on the Erie Lackawanna Railroad prior to the changes accomplished by the March and April 1967 agreements.

Affidavit of Cyril P. Buser in Opposition to Plaintiffs' Motion

There is always a substantial number of employees who, either wilfully or through neglect, do not join any of the unions having representational rights in the craft in which they are employed. The Brotherhood of Railroad Trainmen would, from time to time, cite employees in accordance with the union shop agreement which was then in effect. At that time membership in the Switchmen's Union of North America was a recognized alternative to membership in the Brotherhood of Railroad Trainmen. When it would come to my attention, or to the attention of the other local lodge officers of Lodge No. 370, that the Brotherhood of Railroad Trainmen had cited an employee for failing to be affiliated with the Brotherhood of Railroad Trainmen, our standard operating procedure, which was well known amongst the employees, was to cooperate with the employee thus cited by furnishing him with a bogus back-dated dues receipt.

The cited employee would not have paid any dues to the Switchmen's Union of North America, and he did not pay any money in order to obtain the official receipt from the Switchmen's Union of North America. I issued these receipts to such cited employees because it was recognized by my fellow officers and myself that this was the best possible advertising for the Switchmen's Union of North America. We knew that by issuing such a receipt we were saving a man his job and that he would, in the normal course, be eternally grateful to the Switchmen's Union of North America for this indulgence.

Specific instances of two such situations which occurred on April 13, 1953 are reflected in the exhibits annexed to my affidavit. These exhibits reflect the proceedings which occurred in the case of two employees who were cited by

the Brotherhood of Railroad Trainmen for failure to comply with the union shop agreement. The receipts handed to Mr. Ebert, the Superintendent, in each case as indicated in the transcript, were bogus receipts without consideration and of the type heretofore described, to the best of my recollection.

This procedure was thoroughly standardized. In fact, I arranged on hearing days to have a man stationed in the lobby near the elevator shaft leading to the Superintendent's office. He was armed with a punch and an official lodge seal, and a book of receipts. His instructions were to intercept employees enroute to the Superintendent's office, inquire as to the purpose for which they were going to see the Superintendent and, upon learning that it was for non-affiliation with the Brotherhood of Railroad Trainmen, he was instructed to issue appropriate receipts, punching the dates back a month or two, with variations so as to prevent the appearance of uniformity, and in that manner we were able to attract a substantial number of men into joining the Switchmen's Union of North America.

It is my understanding from conversations with other employees similarly situated to myself that this practice is a long-standing and well recognized custom on the Erie Lackawanna Railroad and that it is widespread. However, this is only hearsay and I do not have personal knowledge except based on conversations wth other employees.

At the time that I was indoctrinated with my duties as Treasurer of the lodge of the Switchmen's Union of North America, an official organizer from the International Headquarters of the Switchmen's Union discussed my responsibilities with me and indicated that the practice we were

following was desirable from the standpoint of the Switchmen's Union. The International Headquarters never asked us to account for any of the monies that would be represented by the bogus receipts that were issued.

Shortly after this experience I joined the Brotherhood of Railroad Trainmen. I was Secretary of my local lodge for 6 years and have been Treasurer for the past 7 years. My local lodge has approximately 500 members.

Local lodge officers of the Brotherhood of Railroad Trainmen, for all practical purposes, had abandoned the procedure of citing employees for failure to have a union shop affiliation with the Brotherhood. This was for the reason that we all knew that in the event such a citation should issue from the employer, the employee thus charged would have no difficulty in obtaining a paid-up receipt from the Switchmen's Union and that a citation under such circumstances would merely drive the free rider into the arms of the Switchmen's Union of North America.

CYRIL P. BUSER

(Sworn to June 22, 1967)

Exhibits Annexed to Affidavit of Cyril P. Buser

ERIE RAILROAD COMPANY

[EMBLEM]

J. R. EBERT
Superintendent
F. E. NAVIN
Asst. Superintendent

Youngstown 3, Ohio

April 16, 1963
File M U

Mr.

Youngstown, Ohio

Dear Sir:—

In connection with the hearing held in this office April 13th, 1953, concerning your failure to comply with the terms of the Union Shop Agreement between the Erie Railroad and the Brotherhood of Railroad Trainmen dated December 18, 1952.

The evidence produced by you at this hearing indicated that you have complied with Section 2 of this agreement and there will be no further action taken.

We are attaching a copy of the testimony taken at this hearing.

Yours very truly,
(Signed) J.R.Ebert

Messrs: Mr. J.C. Porter, 163 Main Street, Hornell, N. Y.
Mr. E. F. Mylott, 448 Clearmount Drive, Youngstown, Ohio

cc: Mr. C. P. Buser, 3106 Hadley Ave., Youngstown, Ohio

Exhibits Annexed to Affidavit of Cyril P. Buser

Youngstown, O. April 15, 1953

Statement of at hearing in Superintendent's Office at Youngstown 1:50 P.M. April 13, 1953.

Present: E. F. Mylott — B. of R. T.
E. E. Davison — "
Cyril Buser — S. U. of N. A.
E. Meszeros — "
J. Wysacki — "

Q. , the Erie Railroad has been notified by the Brotherhood of Railroad Trainmen that you have failed to comply with the terms of the Union Shop Agreement dated December 18, 1952, and that you have not shown any proof of affiliation with any organization in accordance with Section 2 of this agreement. Do you deny this charge?

A.—Yes

Q.—Do you have any evidence to prove that you belong to any organization?

A.—Yes

Q. Please let me see this proof.

(handed Mr. Ebert receipts.)

Statement by Mr. Ebert:

These are receipts for payment of dues for the month of March and April in the S. U. of N. A. and indicates you are a member in good standing.

I ask Mr. Mylott to examine these receipts.

Q.—Mr. Mylott, are you satisfied that these receipts are evidence that is a member of a labor organization, national in scope and in accordance with the Union Shop Agreement—effective December 18, 1952.

A.—Yes

(sgd) E. F. Mylott (sgd)
Local Chairman—B. of R. T. (Yard)

(sgd) F. E. Navin
Witness

Exhibits Annexed to Affidavit of Cyril P. Buser

ERIE RAILROAD COMPANY

[EMBLEM]

J. R. EBERT
Superintendent
F. E. NAVIN
Asst. Superintendent

Youngstown 3, Ohio

April 16, 1963
File M U

Mr.

Youngstown, Ohio

Dear Sir:—

In connection with the hearing held in this office April 13th, 1953, concerning your failure to comply with the terms of the Union Shop Agreement between the Erie Railroad and the Brotherhood of Railroad Trainmen dated December 18, 1952.

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Yours very truly,
(Signed) J.R.Ebert

Messrs: Mr. J.C. Porter, 163 Main Street, Hornell, N. Y.
Mr. E. F. Mylott, 448 Clearmount Drive, Youngstown, Ohio

cc: Mr. C. P. Buser, 3106 Hadley Ave., Youngstown, Ohio

Exhibits Annexed to Affidavit of Cyril P. Buser

Youngstown, O. April 15, 1953

Statement of at hearing in Superintendent's Office at Youngstown 11:10 A.M. April 13, 1953.

Present: E. F. Mylott — B. of R. T.
E. E. Davison — "
Cyril Buser — S. U. of N. A.
E. Meszeros — "
J. Wysacki — "

Q. , the Erie Railroad has been notified by the Brotherhood of Railroad Trainmen that you have failed to comply with the terms of the Union Shop Agreement dated December 18, 1952, and that you have not shown any proof of affiliation with any organization in accordance with Section 2 of this agreement. Do you deny this charge?

A.—Yes

Q.—Do you have any evidence to prove that you belong to any organization?

A.—Yes

Q. Please let me see this proof.

(handed Mr. Ebert receipts.)

Statement by Mr. Ebert:

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I ask Mr. Mylott to examine these receipts.

Q.—Mr. Mylott, are you satisfied that these receipts are evidence that is a member of a labor organization, national in scope and in accordance with the Union Shop Agreement—effective December 18, 1952.

A.—Yes

(sgd) E. F. Mylott (sgd)
Local Chairman—B. of R. T. (Yard)

(sgd) F. E. Navin
Witness

Affidavit of James J. O'Connor in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

JAMES J. O'CONNOR, being duly sworn, deposes and says:

I am a member of the Brotherhood of Railroad Trainmen, and reside at 947 Winono Drive, Youngstown, Ohio 44511. I am an employee of the Erie Lackawanna Railroad Company, having first entered the service of the former Erie Railroad in 1926.

From 1959 to the end of March 1967 I was the Chairman of the General Grievance Committee of the Brotherhood of Railroad Trainmen for the Western District, serving as the chief collective bargaining officer for the employees of the Erie Railroad up to the date of its merger into the Erie Lackawanna Railroad, and thereafter for the Erie Lackawanna Railroad.

Since January 2, 1962, there have been no "Train Service" employees, to my knowledge, who perform services for the Erie Lackawanna Railroad in any craft or class other than those which are represented by the Brotherhood of Railroad Trainmen.

Affidavit of James J. O'Connor in Opposition to Plaintiffs' Motion

The Brotherhood of Railroad Trainmen is, since January 2, 1962, the only authorized collective bargaining agent for "Train Service" employees on the Erie Lackawanna Railroad.

During my 8 years as General Chairman I maintained offices for the conduct of collective bargaining activities at 2617 Market Street, Youngstown, Ohio 44507.

During those years I was a full-time salaried employee of the General Grievance Committee and had no other duties other than my collective bargaining responsibilities for the employees on the railroad.

Assisting me in that capacity during that time was a full-time paid office secretary and member of the General Grievance Committee who were compensated for their services on a daily rate and per diem basis.

I have read the transcript of the deposition of the Switchmen's Union by Neil P. Speirs, which was taken in the U.S. District Courthouse on June 15, 1967. I have particularly looked at Exhibits A through L, which were identified at the time of taking that deposition. These are collective bargaining agreements pertaining to the rules, working conditions and rates of pay of employees of the Erie Lackawanna Railroad who are represented by the Brotherhood of Railroad Trainmen. I affirm to the Court that the exhibits thus identified are true and correct and that many were negotiated either by me or under my supervyision during the years in which I was the General Chairman as aforesaid.

There are many other similar agreements which we have negotiated, but those identified by Mr. Elkind in the Speirs deposition and in his affidavit are a fair sampling

of the types of agreements with which I was constantly involved.

At no time has the General Grievance Committee received any remuneration from the Switchmen's Union of North America or from the Order of Railway Conductors and Brakemen for any of the collective bargaining activities thus carried on by the Brotherhood of Railroad Trainmen under my supervision.

When required to do so, the members of the General Grievance Committee, and then the General Grievance Committee itself, represent any and all employees in the crafts or classes for which we are the designated collective bargaining representative, regardless of whether they are dues-paying members of the Brotherhood of Railroad Trainmen or whether they pay dues to any other organization. We do so without discrimination and are required to do so without discrimination as a matter of law.

When requested to do so, we present and prosecute time claims, claims for penalty pay, and claims for reinstatement, on behalf of all members of the crafts and classes of employees on the Erie Lackawanna Railroad which we represent, regardless of whether or not they are members of the Brotherhood of Railroad Trainmen or belong to any other union. We are required to service 100% of the craft or classes we represent without discrimination. We do not receive any remuneration from members of the Switchmen's Union or from members of the Order of Railway Conductors and Brakemen for the services which we render, or may be called upon to render, to these members, either in connection with collective bargaining activities or grievance procedures.

Affidavit of James J. O'Connor in Opposition to Plaintiffs' Motion

From time to time instances of organized criticism in the Switchmen's Union enclaves have come to my attention, and occasionally litigation is directed toward the Brotherhood of Railroad Trainen spearheaded by members of the dissident unions on the Erie Lackawanna Railroad. A specific instance occurred when, following the merger of the Erie Railroad and the Delaware, Lackawanna & Western Railroad, we negotiated an agreement which we believed fairly and equitably divided work opportunities between former employees of the D.L. & W. and former employees of the Erie. The Switchmen's Union seized on this agreement to spread dissension amongst the employees and commenced litigation in the U.S. District Court in the Northern District of New York and in the U.S. District Court of New Jersey. A fair description of that litigation and the analysis of the Court with respect thereto is set forth in the opinion of Judge Coolahan which is annexed to the affidavit of Arnold B. Elkind, sworn to the 21st day of June, 1967, as Exhibit 12.

As a further illustration of the type of organized criticism engaged in by the Switchmen's Union, the Court is referred to the exhibits annexed to the Answer of the Brotherhood of Railroad Trainmen which was filed in this proceeding, in support of its counterclaim for libel.

As another illustration, in or about November of 1966, the Order of Railway Conductors and Brakemen falsely accused me of being poised to execute a particular agreement pertaining to interdivisional service of freight operations. This was a complete fabrication which, if true, would have been unpopular. No such agreement had in fact been created, but the turmoil stirred up by the accusations circulated by the Order of Railway Conductors

and Brakemen impaired my ability to negotiate a proper and appropriate agreement on this subject with management. Furthermore, such accusations tend to hold the duly constituted officers of the Brotherhood up to revilement by the membership and create feelings of insecurity and dissatisfaction on the part of the employees.

During the years that I was the General Chairman there were many claims which I presented to the top level in management, and thereafter to either the National Railroad Adjustment Board or to Special Boards of Adjustment, which I felt were lacking in merit. I was required to do so because I knew that both the Order of Railway Conductors and Brakemen and the Switchmen's Union were presenting comparable claims on behalf of employees and that if I were to execute my personal judgment with respect to these claims the reaction of the membership would be adverse to the Brotherhood of Railroad Trainmen.

Much of the time of members of the General Grievance Committee, and even of my own time, was necessarily consumed in combating untruthful propaganda directed toward the capability and effectiveness of Brotherhood representation on the Erie Lackawanna Railroad. As specific illustrations, an agreement on crew consists was worked out by the President of the Brotherhood of Railroad Trainmen which preserved many jobs on the Erie Lackawanna Railroad which would otherwise have been lost. The effect of this agreement was totally distorted and misrepresented by the dissident unions, and as a result it became necessary for face to face communication to be accomplished with a substantial number of the employees of the Erie

Lackawanna Railroad who are represented by the Brotherhood (over 3000).

Another instance of the same type of false representation regarding Brotherhood accomplishments came about as a result of a Health and Welfare agreement which was negotiated by the Brotherhood of Railroad Trainmen on a national level. The provisions of this agreement were viciously attacked by the dissident unions as inadequate and a sellout to management, and again the energies, time and money of the Brotherhood had to be dissipated in an effort to counteract the morale-shattering effect of these accusations.

The last 5% wage increase which was negotiated by the Brotherhood of Railroad Trainmen was similarly attacked on an organized basis by the dissident unions, together with the "Monday morning quarterback" descriptions of how much better they would have done had they been handling the matter for the employees.

I have read the affidavit of Arnold B. Elkind, sworn to the 21st day of June, 1967, in which he describes the collective bargaining situation on the Erie Lackawanna Railroad. The statements which he made with reference to that subject are true to the best of my knowledge, information and belief, and I subscribe to his description with the same force and effect as though it were set forth in my affidavit.

As a result of observing the turmoil and conflicting leadership that I have described, it became my firm belief and opinion after 8 years as General Chairman, that the activities of the dissident union organizations made it virtually impossible for the average employee to understand either the nature of the agreements that had been

worked out in order to improve his wages and working conditions, or the part that the Brotherhood of Railroad Trainmen had played in accomplishing those improvements. The morale of the employees can honestly be described as confused and disheartened.

I believe that effective and progressive collective bargaining on the Erie Lackawanna Railroad cannot be accomplished so long as there are enclaves of organized minority dissident unions to contend with. The fact of the matter is that my authority to negotiate came from less than 100% of the Train Service employees, whereas 100% of the Train Service employees were affected by the results of my work and this system, in my opinion, is inherently defective.

J. J. O'Connor

(Sworn to June 21, 1967.)

Affidavit of Griffith Davis in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

GRIFFITH DAVIS, being duly sworn, deposes and says:

I am the Chairman of the General Committee of the Brotherhood of Railroad Trainmen, Erie Lackawanna Railroad, Eastern District. I reside at 1019 Acker Avenue, Scranton, Pennsylvania. I have been employed by the Erie Lackawanna Railroad and maintain my seniority on that road, but since my election as General Chairman for the employees on the Eastern District in January, 1967, I have devoted, and will continue during my term of office to devote, all of my time to the representation of the employees on the Eastern District who are represented by the Brotherhood of Railroad Trainmen. My sole compensation comes from the Brotherhood of Railroad Trainmen. The office of the General Committee is located at 723 South Main Avenue, Scranton, Pennsylvania, and is staffed by a full time secretary and is serviced by the other members comprising the General Committee. The other members of the General Committee are compensated

for their services on a daily basis plus a per diem allowance.

Assisting me in my work as the chief collective bargaining officer on the Erie Lackawanna, Eastern District, for the crafts and classes represented by the Brotherhood of Railroad Trainmen are 13 Local Chairmen constituting the General Committee, of whom two are serving in the capacity of Vice Chairman and Secretary.

I am actively engaged in progressing various notices served under Section 6 of the Railway Labor Act leading toward improvements in rules, working conditions and money increment, and a number of such changes have been accomplished since my election as General Chairman. In addition, I supervise the representational activities of the various Local Chairmen and serve as the final advocate on the Erie Lackawanna property for unresolved grievances, time claims, investigations, and reinstatement applications.

I am named as a defendant in the above entitled action. I was not served with any process and have not heretofore appeared in this action.

As the chief collective bargaining officer for the Brotherhood of Railroad Trainmen for the Eastern District, I executed the "union shop" agreement of March 14, 1967 with the Erie Lackawanna Railroad, the intent of which is the subject matter of this lawsuit. I affirm that both the representatives of the Erie Lackawanna Railroad and myself were completely familiar with the language and purposes of the Railway Labor Act, and particularly with the provisions thereof authorizing union shop agreements. I know that it was my purpose, and I believe that it was

the purpose of my counterpart on the Erie Lackawanna Railroad, to have an agreement that was in strict conformity with all of the applicable terms and conditions of the Railway Labor Act.

We did not include any provision whereby membership in the union shop could be satisfied by paying dues to any alternative union. This provision was left out because the statute does not require such a statement to be included, and also for the reason that there is no other union designated by the National Mediation Board to represent Train Service employees on the Erie Lackawanna Railroad. Hence, there is no problem, and can be no problem, arising on the Erie Lackawanna Railroad which would require an employee to belong to any union other than the Brotherhood of Railroad Trainmen, regardless of what craft or class of Train Service he might be engaged in.

I have read the affidavit of Arnold B. Elkind, sworn to the 21st day of June, 1967. I believe that the description of the collective bargaining situation on the Erie Lackawanna Railroad as set forth by Mr. Elkind to be truthful and accurate, based on my knowledge.

I have also read the affidavit of James J. O'Connor, sworn to the 21st day of June, 1967, in which he describes various experiences which occurred during his 8 years of experience as a General Chairman on the Western District of the Erie Lackawanna Railroad.

I have been an employee on the Erie Lackawanna Railroad for 24 years and have been actively interested in union and collective bargaining activities for 15 years. I share the conclusion of Mr. O'Connor to the effect that the existence of minority enclaves of organized dissident

union members paying dues to a competing union, impedes viable and realistic collective bargaining, and that it produces an artificial volume of claims and grievances, with the net result that the employees are confused, dissatisfied and demoralized.

GRIFFITH DAVIS

(Sworn to June 21, 1967.)

Affidavit of Garold Roberts in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

GAROLD ROBERTS, being duly sworn, deposes and says:

I am the Chairman of the General Committee of the Brotherhood of Railroad Trainmen, Erie Lackawanna Railroad, Western District. I reside at 1366 Lusch Road, Marion, Ohio. I am also an employee of the Erie Lackawanna Railroad, but since my election as General Chairman for the employees on the Western District in March, 1967, I have devoted, and will continue during my term of office to devote, all of my time to the representation of the employees on the Western District who are represented by the Brotherhood of Railroad Trainmen.

My sole compensation comes from the Brotherhood of Railroad Trainmen. The office of the General Committee is located at 515 East Center Street, Marion, Ohio, and is staffed by a full time secretary and is serviced by the other members comprising the General Committee. The other members of the General Committee are compensated for their services on a daily basis plus a per diem allowance.

Affidavit of Garold Roberts in Opposition to Plaintiffs' Motion

Assisting me in my work as the chief collective bargaining officer on the Erie Lackawanna Railroad, Western District, for the crafts and classes represented by the Brotherhood of Railroad Trainment, are 28 Local Chairmen constituting the General Committee, of whom 2 are serving in the capacity of Vice Chairman and Secretary.

Annexed to the affidavit of Arnold B. Elkind as Exhibit 10 is a document which represents the current status of various Section 6 Notices which I am now processing with management in order to accomplish improvements in working rules and conditions. These will give the Court a concept of the nature of my collective bargaining responsibilities.

I have read both the affidavit of James J. O'Connor, sworn to the 21st day of June, 1967, and the affidavit of Arnold B. Elkind, sworn to the 21st day of June, 1967.

I agree with the opinions expressed by Mr. O'Connor, which are based on his 8 years of experience as my predecessor General Chairman, regarding the morale of the employees of the Erie Lackawanna Railroad and the complaints of employees, their dissatisfaction, and their confusion.

I believe that Mr. Elkind's affidavit fairly and accurately sets forth a description of the collective bargaining situation that prevails on the Erie Lackawanna Railroad.

I was a party signatory to the "Union Shop Agreement" which was executed on April 4, 1967 with the Erie Lackawanna Railroad. Both the representative of the Erie Lackawanna and myself were familiar with the language and purposes of the Railway Labor Act, and particularly the provisions thereof authorizing union shop agreements;

Affidavit of Garold Roberts in Opposition to Plaintiffs' Motion

we fully intended our agreement to be in conformity with all of the applicable terms and conditions thereof. We did not include any provision for alternative union membership in said agreement because the statute does not require such a statement to be included, and because there is no other union designated by the National Mediation Board to represent Train Service employees on the Erie Lackawanna Railroad. Hence, there is no problem requiring an employee to belong to any union other than the Brotherhood of Railroad Trainmen, regardless of what craft or class of Train Service he may be engaged in.

GAROLD ROBERTS

(Sworn to June 21, 1967.)

Affidavit of Paul W. Murphy in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF OHIO,
COUNTY OF CUYAHOGA, *ss.*:

PAUL W. MURPHY, being duly sworn, deposes and says:

I am a full-time employee of the Brotherhood of Railroad Trainmen, one of the defendants above named. My position is General Auditor and I am fully acquainted with the financial records and accounts of the Brotherhood of Railroad Trainmen. Such records are under my supervision and direction.

I have been requested to furnish certain information concerning the disbursements of the Brotherhood of Railroad Trainmen for the calendar year 1966 as reflected by said records.

During that year the Brotherhood disbursed $54,820.00 to the Railway Labor Executives Association.

The Brotherhood disbursed $78,996.89 for the salaries and expenses of its National Legislative Office in Washington, D. C.

The Brotherhood disbursed a total of $583,295.41 for the expenses and salaries of the various Legislative Boards and Legislative Representatives in the various states

served by the various railroads belonging to the Eastern Carriers' Conference Committee.

These figures are accurate to the best of my information and belief.

PAUL W. MURPHY

(Sworn to June 21, 1967.)

(R. 560-562)

Affidavit of Raymond H. Branda in Opposition to Motion of Plaintiffs for Summary Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

RAYMOND H. BRANDA, being duly sworn deposes and says:

1. I am the attorney for the defendant Erie Lackawanna Railroad Company in the above entitled matter and I make this affidavit in opposition to the motion of plaintiffs for an order granting summary judgment therein. I am fully familiar with all the pleadings and proceedings heretofore had herein.

2. It is respectfully pointed out to the Court that pursuant to the terms of an election conducted by the National Mediation Board, the defendant Brotherhood of Railroad Trainmen was duly elected as a certified bargaining agent representing the plaintiff unions as well as the defendant Brotherhood of Railroad Trainmen. In accordance with the statutory provisions applicable therefore, the defendant Erie Lackawanna Railroad Company, has entered into no contracts with the plaintiff Switchmen's Union of North America or the plaintiff Order of Railway Conductors and Brakemen.

Affidavit of Raymond H. Branda in Opposition to Motion of Plaintiffs for Summary Judgment

3. It is the opinion of the defendant, Erie Lackawanna Railroad Company, that the principle of the union shop is a salutary principle for railway carriers because ordinarily grievance procedures become a battleground for rival unions; the certified bargaining agent, in this case, the Brotherhood of Railroad Trainmen, cannot enforce disciplinary measures on its membership for the obvious reason that such a disciplined employee would resign the certified bargaining agent and join a rival union, thus lessening the effect and rendering meaningless such disciplinary provisions as is included in a collective bargaining agreement.

4. These principles are inherent and necessary to the orderly procedures established by the idea of a union shop. In this connection, a certain amount of ambivalence is required of the management as the Brotherhood of Railroad Trainmen, while they may be representatives today, may be unseated as bargaining agents on some future day. It should be made clear to the Court that it is the principle that is supported and not the identity of any particular union. The important thing is that whatever union is so certified be allowed to discharge its duties without the restraint of harassment by the unsuccessful unions.

5. Among these considerations would be the necessity for the certified union, in this case, the Brotherhood of Railroad Trainmen, to consider the reactions of any steps taken on behalf of the membership. Another consideration is the impaired morale of employees; the additional and unnecessary dimensions added to the handling of safety problems.

Affidavit of Raymond H. Branda in Opposition to Motion of Plaintiffs for Summary Judgment

6. Of paramount importance, of course, is the undesirability of undermining the confidence of the traveling public with instances of demonstrating unrest due to the actions of minority enclaves on the property carrying out a form of gorilla warfare, coaching from the sidelines, carping criticism and visible demonstrations of unrest that would do little, if any, to promote the welfare of a majority, and particular, the welfare of the public which uses the facilities.

WHEREFORE, it is respectfully requested that the motion made by the plaintiffs for summary judgment be denied.

RAYMOND H. BRANDA

(Sworn to June 26, 1967.)

Notice of Motion for Summary Judgment by Defendants Brotherhood of Railroad Trainmen and W. J. Weil

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of ARNOLD B. ELKIND, sworn to the 21st day of June, 1967, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Motion Part thereof, to be held at Room 506 of the United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 5th day of July, 1967, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, dismissing the complaints of the plaintiffs and of the intervening plaintiffs, together with the costs and disbursements of this action, and vacating the temporary injunction entered herein dated April 27, 1967.

Dated: New York, N. Y.
June 22, 1967.

Notice of Motion for Summary Judgment by Defendants Brotherhood of Railroad Trainmen and W. J. Weil

Yours, etc.

/s/ ARNOLD B. ELKIND
Arnold B. Elkind
Attorney for Defendants,
Brotherhood of Railroad Trainmen
and W. J. Weil
122 East 42nd Street
New York, N. Y. 10017

To:

ALAN F. PERL, Esq.
Sturm and Perl
150 Broadway
New York, N. Y. 10038

and

LEE LEIBIK
RUTH WEYAND
343 South Dearborn Street
Chicago, Illinois 60604
Attorneys for Plaintiffs
and Intervenor-Plaintiffs

RAYMOND H. BRANDA, Esq.
Attorney for Defendant,
Erie Lackawanna Railroad
Company
140 Cedar Street
New York, N. Y. 10006

Affidavit of Arnold B. Elkind Read in Support of Defendants' Motion for Summary Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 67 C 1264

[SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

ARNOLD B. ELKIND, being duly sworn, deposes and says:

I am the attorney for the Brotherhood of Railroad Trainmen, an unincorporated association, and for W. J. Weil, sued herein individually and in behalf of all members of the Brotherhood of Railroad Trainmen. I am making this affidavit in support of the motion of these two defendants to grant summary judgment dismissing the complaints.

This action was commenced on March 31, 1967, and there has been no service effected on Griff Davis, who is designated as a defendant individually and as General Chairman of the Brotherhood of Railroad Trainmen.

There has been no cause of action set forth against W. J. Weil in his individual capacity.

It is my understanding that the Erie Lackawanna Railroad Company, the other named defendant, is also moving for summary judgment dismissing the complaints.

The prior proceedings herein are adequately described in my affidavit, sworn to the 21st day of June, 1967, which is being served and filed in opposition to the motion of the plaintiffs for summary judgment. By this reference

Affidavit of Arnold B. Elkind Read in Support of Defendants' Motion for Summary Judgment

I intend that all of the statements and allegations set forth in that affidavit be incorporated as a part of these moving papers with the same force and effect as though fully set forth herein.

This motion for summary judgment is made by the defendants whom I represent pursuant to Rule 56(b) of the Federal Rules of Civil Procedure.

The first basis upon which the motion is made is that there is no justiciable controversy. On or about May 23, 1967 the defendant, Brotherhood of Railroad Trainmen, served and filed Requests for Admission under Rule 36, addressed to all of the plaintiffs. Requests No. 2 (I) and (J) read as follows:

"2. That each of the following statements is true:

(I) That there have been no discharges by the Erie Lackawanna Railroad pursuant to the union shop agreements of March 14, 1967 (Eastern District) and April 4, 1967 (Western District).

(J) That there has been no threat made to discharge any employee purported to be covered by the union shop agreements dated March 14, 1967 and April 4, 1967, by the Erie Lackawanna Railroad Company."

I have not been served with any denials of these Requests for Admission. Under the Request and under Rule 36 the matters of which the admission was requested are deemed admitted.

The complaint in this action seeks injunctive relief on behalf of the individual plaintiffs and a declaratory judgment on behalf of the individual plaintiffs. While the

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Switchmen's Union of North America, AFL-CIO, an unincorporated association, is named as a plaintiff, and while the Order of Railway Conductors and Brakemen, an unincorporated association, is named as an intervening plaintiff, the complaints do not seek an injunction or declaratory relief on behalf of either of these unions. The complaints only seek money damages on behalf of these two unions. However, in its moving papers for summary judgment the attorney for the plaintiffs admitted that there had been no money damages and therefore, in effect, withdrew all pending claims asserted in the litigation on behalf of the two unions, confining the litigation field thereby to the claims of the individual plaintiffs, both original and intervening, for injunctive relief and a declaratory judgment.

In the light of the Rule 36 admissions that these plaintiffs have not been threatened with a discharge, the only remaining question is whether or not their alleged membership in the Switchmen's Union entitles them to have the union shop contract between the Brotherhood of Railroad Trainmen and the Erie Lackawanna Railroad spell out in *haec verba* that their requirement of membership shall be satisfied if they hold membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employees of a craft or class in the service in which they are employed.

The absence of this language in the agreement does not create a justiciable controversy. There is nothing in the Railway Labor Act which requires a union shop contract to carry such a provision as a matter of law.

The plaintiffs "have no right" to compel the parties to include such a provision in a collective bargaining agreement as a matter of law.

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By their failure to deny the Requests for Admission dated May 23, 1967, the plaintiffs have admitted the truth of the following statements:

"(A) That the brotherhood of Railroad Trainmen, at the time of the commencement of this action and for a number of years prior thereto, was the exclusive bargaining agent, duly certified as such by the National Mediation Board, for the employes in the crafts or class of conductors, ticket collectors, baggagemen, trainmen, and yard service employees working in both road and yard service for the Erie Lackawanna Railroad Company.

(B) That the Brotherhood of Railroad Trainmen and the Erie Lackawanna Railroad Company are currently parties to written collective bargaining agreements containing provisions for rates of pay, hours of work, health and welfare benefits, seniority rights, union security, and numerous other terms and conditions of employment for the employees working in yard and road service.

(C) That all employees on the Erie Lackawanna Railroad within the crafts or classes represented by the Brotherhood of Railroad Trainmen receive the benefits of said collective bargaining agreements, including the individual plaintiffs, the individual intervening plaintiffs, and those employees paying dues to the Switchmen's Union of North America and/or the Order of Railway Conductors and Brakemen.

(D) That the Switchmen's Union of North America is not now, and has not been for several years, certified by the National Mediation Board as the bargaining representaive of any employees of any class or craft on the Erie Lackawanna Railroad.

(E) That the Order of Railway Conductors and Brakemen is not now, and has not been for several years, certified by the National Mediation Board as the bargaining representaitve of any employees of any class or craft on the Erie Lackawanna Railroad.

(F) That at no time material to this proceeding, nor at the time of the commencement of this action, has either the Switchmen's Union of North America or the Order of Railway Conductors and Brakemen been recognized by the Erie Lackawanna Railroad Company as the exclusive bargaining agent for any employees of any class or craft performing services on the Erie Lackawanna Railroad.

(G) That neither at the time of the commencement of this proceeding nor at any time material, have either the Switchmen's Union of North America or the Order of Railway Conductors and Brakemen been a party to any collective bargaining agreement with the Erie Lackawanna Railroad Company.

(H) That the Brotherhood of Railroad Trainmen, as the exclusive bargaining agent of all the employees in the class or crafts which it represents

with the Erie Lackawanna Railroad Company, is under an enforceable obligation to represent all employees covered by the agreement, whether or not they are members of the Brotherhood of Railroad Trainmen.

(M) That none of the plaintiffs, or other members of the class or crafts they assert to represent in this proceeding, hold employment rights with the Erie Lackawanna Railroad in any craft or class other than those classifications which are exclusively represented on the Erie Lackawanna Railroad by the Brotherhood of Railroad Trainmen."

Since none of the plaintiffs or other members of the class or craft they assert to represent in this proceeding hold employment rights with the Erie Lackawanna Railroad in any craft or class other than those classifications which are exclusively represented on the Erie Lackawanna Railroad by the Brotherhood of Railroad Trainmen, they would not be able to avail themselves of alternative union shop membership in any event, so that the absence of the language contained in Section 2, Eleventh (c) [45 U.S.C. 152, Eleventh (c)] would under no circumstances be applicable or available to any of thes plaintiffs even if such language had been included in the collective bargaining agreement.

The second basis for this motion is that it is undisputed that the Brotherhood and the Erie Lackawanna intended to comply with all of the terms and conditions of the Railway Labor Act when they negotiated and executed the union shop agreement. Since there is no requirement for including the proviso for alternative union shop membership in the agreement, the plaintiffs must prove an intent

to violate the Act from some other source. This they have not done and cannot do.

The third and final separate basis upon which this motion for summary judgment is predicated, is that Section 2, Eleventh (c) of the Railway Labor Act was never intended by the Congress to allow alternative union shop membership in an operating union national in scope and organized under the Railway Labor Act, unless that union held collective bargaining rights or was a certified collective bargaining representative on the carrier involved. As will be shown, the legislative hearings and debate that preceded passage of the bill reveal a clear Congressional intent to limit the alternative union shop proviso to the narrow situation of intercraft mobility, where it is occasionally necessary for an employee to temporarily change from one operating craft to another.

WHEREFORE, the defendants, Brotherhood of Railroad Trainmen, Griff Davis, individually and as general Chairman of the Brotherhood of Railroad Trainmen, and W. J. Weil, individually and in behalf of all members of the Brotherhood of Railroad Trainmen, respectfully ask that an order be entered pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, dismissing the complaints of the plaintiffs and of the intervening plaintiffs, together with the costs and disbursements of this action, and vacating the temporary injunction entered herein, dated April 27, 1967.

ARNOLD B. ELKIND

(Sworn to June 21, 1967)

Clerk's Certificate

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

I, A. DANIEL FUSARO, Clerk of the United States Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from A-D; and from 1 to 1924 inclusive, contain the original record certified by the Clerk of the District Court for the Southern District of New York, and the proceedings in this court, in the case of,

John P. O'Connell, et al.,

Plaintiffs-Appellees,

v.

Erie Lackawanna Railroad Company,

Defendant,

Brotherhood of Railroad Trainmen, an unincorporated association and Griff Davis, individually and as General Chairman of the Brotherhood of Railroad Trainmen, and W. J. Weil, individually and in behalf of all members of the Brotherhood of Railroad Trainmen,

Defendants-Appellants,

Wayne W. Delaney, et al.

Intervenor-Plaintiffs-Appellees.

Clerk's Certificate

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York in the Second Circuit this twenty-eighth day of May in the year of our Lord one thousand nine hundred and sixty-eight of the Independence of the said United States the one hundred and ninety-second.

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Clerk